
ENGROSSED SUBSTITUTE HOUSE BILL 2079

State of Washington

56th Legislature

1999 Regular Session

By House Committee on Natural Resources (originally sponsored by Representatives Regala, Buck, Eickmeyer, Anderson, Rockefeller, Romero, Veloria and Keiser)

Read first time 03/02/1999.

1 AN ACT Relating to salmon recovery; amending RCW 75.46.010,
2 75.46.050, 75.46.060, 75.46.070, 75.46.080, 75.46.100, and 75.46.130;
3 adding new sections to chapter 75.46 RCW; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 75.46 RCW
6 to read as follows:

7 The legislature finds that it is important to monitor the overall
8 health of the salmon resource to determine if recovery efforts are
9 providing expected returns. It is also important to monitor the
10 effectiveness of the state's overall salmon recovery efforts to secure
11 federal acceptance of the state's approach to salmon recovery. In
12 addition, it is important to monitor salmon restoration projects to
13 determine their effectiveness. Adaptive management cannot exist
14 without monitoring. For these reasons, the legislature believes that
15 a coordinated and integrated monitoring process should be developed in
16 the salmon recovery office for use by local recovery efforts. The role
17 of the salmon recovery office should be to develop and provide to
18 entities involved in salmon recovery data quality objectives, a range
19 of acceptable parameters to monitor, acceptable data formats, data

1 calibration and coordination, a method of storing and retrieving data,
2 and analysis and interpretation of data. The role of local recovery
3 efforts should be to collect monitoring data in compliance with the
4 recommended data quality objectives, parameters, and formats, and to
5 provide such data to the state salmon recovery office for storage.

6 **Sec. 2.** RCW 75.46.010 and 1998 c 246 s 2 are each amended to read
7 as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

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

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

17 (3) "Habitat project list" is the list of projects resulting from
18 the critical pathways methodology under RCW 75.46.070(2). Each project
19 on the list must have a written agreement from the landowner on whose
20 land the project will be implemented. Projects include habitat
21 restoration projects, habitat protection projects, habitat projects
22 that improve water quality, habitat projects that protect water
23 quality, habitat-related mitigation projects, fish passage projects,
24 fish screening projects, and habitat project corrective maintenance and
25 monitoring activities.

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

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

35 (6) "Project sponsor" is a county, city, special district, tribal
36 government, a combination of such governments through interlocal
37 agreements provided under chapter 39.34 RCW, a nonprofit organization,
38 or one or more private citizens.

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

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

7 (9) "Tribe" or "tribes" means federally recognized Indian tribes.

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

10 (11) "Owner" means the person holding title to the land or the
11 person under contract with the owner to lease or manage the legal
12 owner's property.

13 **Sec. 3.** RCW 75.46.050 and 1998 c 246 s 6 are each amended to read
14 as follows:

15 (1) The governor shall request the national academy of sciences,
16 the American fisheries society, or a comparable institution to screen
17 candidates to serve as members on the independent science panel. The
18 institution that conducts the screening of the candidates shall submit
19 a list of the nine most qualified candidates to the governor, the
20 speaker of the house of representatives, and the majority leader of the
21 senate. The candidates shall reflect expertise in habitat requirements
22 of salmon, protection and restoration of salmon populations, artificial
23 propagation of salmon, hydrology, or geomorphology.

24 (2) The speaker of the house of representatives and the majority
25 leader in the senate shall each remove one name from the nomination
26 list. The governor shall consult with tribal representatives and the
27 governor shall appoint five scientists from the remaining names on the
28 nomination list.

29 (3) The members of the independent science panel shall serve four-
30 year terms. Vacant positions on the panel shall be filled in the same
31 manner as the original appointments. Members shall serve no more than
32 two full terms. The independent science panel members shall elect the
33 chair of the panel among themselves every two years. (~~The members of~~
34 ~~the independent science panel shall be compensated as provided in RCW~~
35 ~~43.03.250 and reimbursed for travel expenses in accordance with RCW~~
36 ~~43.03.050 and 43.03.060.~~) Based upon available funding, the
37 governor's salmon recovery office may contract for services with

1 members of the independent science panel for compensation under chapter
2 39.29 RCW.

3 (4) The independent science panel shall be governed by generally
4 accepted guidelines and practices governing the activities of
5 independent science boards such as the national academy of sciences.
6 The purpose of the independent science panel is to help ensure that
7 sound science is used in salmon recovery efforts. The governor's
8 salmon recovery office shall request review of salmon recovery plans by
9 the science review panel. The science review panel does not have the
10 authority to review individual projects or project lists developed
11 under RCW 75.46.060, 75.46.070, and 75.46.080 or to make policy
12 decisions.

13 (5) The independent science panel, in conjunction with the salmon
14 recovery office, shall recommend standardized monitoring indicators and
15 data quality guidelines for use by entities involved in salmon recovery
16 activities across the state. The panel shall also recommend electronic
17 formats that will allow data to be provided to the state salmon
18 recovery office for storage and to be shared across the state in a
19 salmon monitoring network.

20 (6) State salmon monitoring data provided by lead entities,
21 regional fisheries enhancement groups, and others, shall be included in
22 the salmon and steelhead inventory and assessment project.

23 (7) The independent science panel, in conjunction with the salmon
24 recovery office, shall also recommend criteria for the systematic and
25 periodic evaluation of monitoring data in order for the state to be
26 able to answer critical questions about the effectiveness of the
27 state's salmon recovery efforts.

28 (8) The recommendations on monitoring as required in this section
29 shall be provided in a report to the governor and to the legislature by
30 the independent science panel, in conjunction with the salmon recovery
31 office, no later than December 31, 2000. The report shall also include
32 recommendations on the level of effort needed to sustain monitoring of
33 salmon projects and other recovery efforts, and any other
34 recommendations on monitoring deemed important by the independent
35 science panel, in conjunction with the salmon recovery office.

36 (9) The independent science panel shall submit its findings to the
37 legislature and the governor.

1 **Sec. 4.** RCW 75.46.060 and 1998 c 246 s 7 are each amended to read
2 as follows:

3 (1)(a) Counties, cities, and tribal governments must jointly
4 designate, by ~~((official))~~ resolution or by letters of support, the
5 area for which a habitat ~~((restoration))~~ project list is to be
6 developed and the lead entity that is to be responsible for submitting
7 the habitat ~~((restoration))~~ project list. No project included on a
8 habitat ~~((restoration))~~ project list shall be considered mandatory in
9 nature and no private landowner may be forced or coerced into
10 participation in any respect. The lead entity may be a county, city,
11 conservation district, special district, tribal government, or other
12 entity.

13 (b) The lead entity shall establish a committee that consists of
14 representative interests of counties, cities, conservation districts,
15 tribes, environmental groups, business interests, landowners, citizens,
16 volunteer groups, regional fish enhancement groups, and other
17 ~~((restoration))~~ habitat interests. The purpose of the committee is to
18 provide a citizen-based evaluation of the projects proposed to promote
19 salmon habitat ~~((restoration))~~. The interagency review team may
20 provide the lead entity with organizational models that may be used in
21 establishing the committees.

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

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

34 **Sec. 5.** RCW 75.46.070 and 1998 c 246 s 8 are each amended to read
35 as follows:

36 (1) Critical pathways methodology shall be used to develop a
37 habitat project list and a habitat work schedule that ensures salmon
38 ~~((restoration))~~ recovery activities will be prioritized and implemented

1 in a logical sequential manner that produces habitat capable of
2 sustaining healthy populations of salmon.

3 (2) The critical pathways methodology shall:

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

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

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

16 (d) Include a review of monitoring data, evaluate project
17 performance, and make recommendations to the committee established
18 under RCW 75.46.060 and to the interagency review team. The technical
19 advisory group has responsibility for this task; and

20 (e) Describe the adaptive management strategy that will be used.
21 The committee established under RCW 75.46.060 shall have responsibility
22 for this task. If a committee has not been formed, the technical
23 advisory group shall have the responsibility for this task.

24 (3) The habitat work ((list)) schedule shall include all projects
25 developed pursuant to subsection (2) of this section as well as any
26 other salmon habitat ((restoration)) project implemented in the region,
27 including habitat preservation projects funded through the Washington
28 wildlife and recreation program, the conservation reserve enhancement
29 program, and other conservancy programs. The habitat work ((list))
30 schedule shall also include the start date, duration, estimated date of
31 completion, estimated cost, and, if appropriate, the affected salmonid
32 species of each project. Each schedule shall be updated on an annual
33 basis to depict new activities.

34 **Sec. 6.** RCW 75.46.080 and 1998 c 246 s 9 are each amended to read
35 as follows:

36 (1) Representatives from the conservation commission, the
37 department of transportation, the interagency committee on outdoor
38 recreation, the department of ecology, the department of natural

1 resources, and the department of fish and wildlife shall establish an
2 interagency review team. Except as provided in subsection ~~((6))~~ (7)
3 of this section, habitat ~~((restoration))~~ project lists shall be
4 submitted to the interagency review team by January 1st ~~((and July~~
5 ~~1st))~~ of each year beginning in 1999.

6 (2) If no lead entity has been formed under RCW 75.46.060, the
7 interagency review team shall rank, prioritize, and dispense funds for
8 habitat ~~((restoration))~~ projects by giving preference to the projects
9 that:

10 (a) Are based upon the limiting factors analysis identified under
11 RCW 75.46.070;

12 (b) Provide a greater benefit to salmon recovery based upon the
13 information contained in the department of fish and wildlife salmonid
14 stock inventory and any comparable science-based assessment;

15 ~~((b))~~ (c) Will be implemented in a more critical area based upon
16 the stock status information contained in the department of fish and
17 wildlife salmonid stock inventory and any comparable science-based
18 assessment;

19 ~~((e))~~ (d) Are the most cost-effective;

20 ~~((d))~~ (e) Have the greatest matched, or in-kind funding; and

21 ~~((e))~~ (f) Will be implemented by a sponsor with a successful
22 record of project implementation.

23 (3) If a lead entity established under RCW 75.46.060 has been
24 formed, the interagency review team shall evaluate the habitat project
25 list~~((s—and))~~ for funding based upon the criteria contained in
26 subsection (2) of this section. The interagency review team may
27 remove, but not add, projects from a habitat project list. The
28 interagency review team shall give preference to projects that are on
29 a project list submitted by a lead entity. The interagency review team
30 may also provide block grants to the lead entity subject to available
31 funding.

32 (4) The interagency review team shall apply the criteria
33 established in subsection (2) of this section in a manner that results
34 in the highest priority being given to critical fish stocks. The
35 criteria shall be applied in this manner in areas where there is a lead
36 entity established and in areas where no lead entity has been
37 established.

1 (5) The interagency review team shall provide a summary of funding
2 for ((habitat)) restoration project lists to the governor and to the
3 legislature by December 1st of each year.

4 ((+5)) (6) The interagency review team may annually establish a
5 maximum amount of funding available for any individual project, subject
6 to available funding. The interagency review team shall attempt to
7 assure a geographical balance in assigning priorities to projects.

8 ((+6)) (7) For fiscal year 1998, the department of fish and
9 wildlife, the conservation commission, and the department of
10 transportation may authorize, subject to appropriations, expenditures
11 for projects that have been developed to restore salmon habitat before
12 completion of the project lists required in RCW 75.46.060(2).

13 ((+7) ~~Where a lead entity has been established pursuant to RCW
14 75.46.060, the interagency review team may provide block grants to the
15 lead entity, subject to available funding.~~)

16 **Sec. 7.** RCW 75.46.100 and 1998 c 246 s 11 are each amended to read
17 as follows:

18 The sea grant program at the University of Washington is authorized
19 to provide technical assistance to volunteer groups and other project
20 sponsors in designing and ((performing)) implementing habitat
21 ((restoration)) projects that address the limiting factors analysis
22 ((of regional habitat work plans)) required under RCW 75.46.070. The
23 cost for such assistance may be covered on a fee-for-service basis.

24 **Sec. 8.** RCW 75.46.130 and 1998 c 246 s 17 are each amended to read
25 as follows:

26 Only those funds appropriated for the habitat ((restoration))
27 projects under this chapter are subject to the requirements of RCW
28 75.46.080.

29 NEW SECTION. **Sec. 9.** A new section is added to chapter 75.46 RCW
30 to read as follows:

31 (1) For purposes of this chapter, the system operations advisory
32 committee that was formed in 1981 as a result of a court decision to
33 protect spring chinook redds, and whose responsibilities were broadened
34 to protect all species in the Yakima basin adjudication proceedings of
35 *Department of Ecology v. Acquavella*, shall add nine representatives to
36 its membership as provided in this subsection and serve as the lead

1 entity for the Yakima river basin. The county legislative authorities
2 from Yakima, Kittitas, and Benton counties shall each appoint a member
3 from their respective county legislative authority to serve on the lead
4 entity. Each of these three county legislative authorities shall also
5 appoint a general citizen representative of their respective county as
6 a representative on the lead entity. The cities within Yakima,
7 Kittitas, and Benton counties shall jointly designate a single city
8 representative on the lead entity. The water supply utilities, as
9 defined in RCW 90.82.020, within Yakima, Kittitas, and Benton counties
10 shall jointly designate a single utility representative on the lead
11 entity. After the members of the lead entity have been appointed, the
12 members of the lead entity shall choose an environmental representative
13 on the lead entity. Any vacancies on the lead entity shall be filled
14 in the manner as the initial appointment.

15 (2) The lead entity established pursuant to subsection (1) of this
16 section is responsible for establishing a committee under RCW 75.46.060
17 to compile the habitat project list and to designate the area to be
18 covered by the list, and to forward the habitat project list to the
19 interagency review team for review pursuant to RCW 75.46.080. Before
20 the habitat project list is transmitted to the interagency review team,
21 the lead entity may re-rank the priorities for individual projects
22 established by the committee under RCW 75.46.060.

23 (3) The lead entity established pursuant to subsection (1) of this
24 section is responsible for all duties and responsibilities assigned to
25 lead entities under this chapter or otherwise.

26 NEW SECTION. **Sec. 10.** Section 9 of this act is necessary for the
27 immediate preservation of the public peace, health, or safety, or
28 support of the state government and its existing public institutions,
29 and takes effect immediately.

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