
SENATE BILL 6870

State of Washington 56th Legislature 2000 1st Special Session

By Senator Morton

Read first time 03/31/2000. Referred to Committee on Natural Resources, Parks & Recreation.

1 AN ACT Relating to harvest management of stocks of anadromous
2 salmonids; amending RCW 75.08.012 and 77.04.055; adding new sections to
3 chapter 77.12 RCW; creating new sections; providing an effective date;
4 and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature finds there has been a
7 sizeable increase in the number of stocks of salmonids originating in
8 Washington waters that have recently been declared as threatened or
9 endangered by federal agencies under the federal endangered species
10 act. Unlike most species that have been placed on the federal
11 endangered species act, salmonids continue to be allowed to be
12 harvested as a sport, for commercial purposes, and for tribal
13 commercial, ceremonial, and subsistence purposes. Such harvests occur
14 throughout the waters of many different governmental jurisdictions,
15 each of whom has an interest in maintaining its share of the catch.
16 The legislature finds that there is tension between preserving and
17 restoring listed stocks and the ability to maintain acceptable levels
18 of harvest in a mixed stock fishery, which results in direct and
19 incidental harvest of these listed stocks of fish.

1 The legislature finds that generally fish reared in hatcheries can
2 sustain a higher rate of harvest than fish that rely on natural
3 spawning. Fish hatcheries have been used, for nearly a century in some
4 regions, as a way to augment the number of salmonids available for
5 harvest. Hatcheries have been used for increasing production when
6 there is insufficient escapement to natural spawning grounds and for
7 mitigation for loss of natural habitat. Because of the extensive use
8 of hatcheries by numerous entities throughout the state for decades, it
9 is frequently difficult to distinguish on a scientific basis between
10 aboriginal native stocks, current natural reproducing stocks, and
11 hatchery stocks some of which are native and other that have been
12 introduced from other areas. Information derived from fish marking
13 programs indicate the amount of straying and intermixing of fish from
14 one watershed with fish in another has been occurring for decades. The
15 extent to which these various fish stocks may have intermixed, as
16 compared to remaining separate and distinct stocks, is not well
17 understood by the various interests that are affected by the
18 consequences of various recovery strategies for listed stocks.

19 The legislature finds that several hundreds of millions of public
20 and private moneys have been spent and likely more will be expended to
21 restore listed stocks of anadromous salmonids. Mechanisms that assure
22 adequate protection of listed stocks from the impacts of harvest need
23 to be established to assure that restoration efforts will be productive
24 and long lasting. Further, that establishment of such mechanisms are
25 needed to enhance public confidence that these public and private
26 expenditures will not go forward without close monitoring and periodic
27 reporting of verifiable progress.

28 The purpose of this act is to establish policies and strategies
29 necessary to assure that stocks that have been listed under the federal
30 endangered species act will be protected from overharvest and restored,
31 while maintaining to the extent possible, the continued harvest of
32 stocks from watersheds with abundant populations.

33 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.12 RCW
34 to read as follows:

35 (1) Each year the department shall identify each anadromous
36 salmonid stock that has been listed as threatened or endangered under
37 the federal endangered species act. For each of these identified

1 stocks, the department shall report the best available estimates of
2 the following:

3 (a) The run size of adult fish available for harvest within the
4 stock's migratory range and for spawning escapement;

5 (b) The rate of harvest-induced mortality in the waters of each
6 state and province through which the fish migrate and a delineation of
7 the rate by sports, nontribal commercial, and tribal harvest. Harvest
8 induced mortality shall include such sources as by-catch and hook
9 mortality;

10 (c) The total cumulative rate and number of harvest-induced
11 mortality for each listed stock;

12 (d) The minimum escapement goal that would be necessary to remove
13 the stock from its endangered or threatened status;

14 (e) The optimal escapement goal that would provide sufficient
15 spawners to use the available spawning and rearing habitat fully; and

16 (f) The number of fish that escaped harvest and continue to migrate
17 through state waterways for spawning.

18 (2) By December 1st of each year, the report shall be compiled.
19 Reports for ensuing years shall have a consistent and well-summarized
20 format to allow for comparability between years to determine the rate
21 of change and whether success is being attained. The report shall be
22 transmitted to the governor, the secretary of the senate, and to the
23 chief clerk of the house of representatives. Copies of the report
24 shall be available to the public upon request at no charge.

25 NEW SECTION. **Sec. 3.** (1) The legislature finds that the methods
26 by which salmonids are currently propagated in waters of the state
27 evolved over many decades are too complex to be instantly replaced
28 without also placing the fisheries resource, dependent and affected
29 communities, and the state's economy at unnecessary risk. The state,
30 and public and private entities approved by the state, have made
31 considerable investments in facilities to propagate salmonids and have
32 been done voluntarily or to fulfill mitigation requirements. The
33 legislature finds that federal fishery agencies are mandating that
34 major modifications be implemented immediately without a thorough
35 analysis of the impacts, an evaluation of less impacting alternatives,
36 or documentation of the anticipated impacts. The legislature finds
37 there are questions as to whether federal agencies have based their
38 policies on only one of a number of possible interpretations of federal

1 law. The legislature finds that the state's fishery resource,
2 dependent and affected communities, and the state's economy could be
3 unnecessarily and permanently harmed by overly precipitous federal
4 action.

5 (2) Until June 30, 2002, to the extent not inconsistent with
6 federal law, there shall be a moratorium placed on implementation of
7 orders issued by federal fishery agencies that do not comply with the
8 provisions of section 4 of this act. During the period the moratorium
9 is in effect, representatives of the executive and the legislative
10 branches of the state of Washington shall consult with their
11 counterparts in the states of Oregon, Idaho, and Montana and involved
12 federal fishery agencies, to examine the basis for federal policies
13 that order destruction of significant populations of salmonids and
14 their eggs and sperm, and to evaluate alternatives that have less
15 impact to the salmonid resource, to dependent and affected communities,
16 and to each state's economy.

17 (3) By December 15, 2001, the department of fish and wildlife shall
18 submit a report that provides a list of the alternative policies that
19 were considered together with the estimated impact of each alternative
20 to the fishery resource, to dependent and affected communities, and to
21 Washington's economy. The report shall be submitted to the chief clerk
22 of the house of representatives and the secretary of the senate.

23 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.12 RCW
24 to read as follows:

25 To the extent not inconsistent with federal law, all fish reared in
26 state-funded hatcheries and fish reared in mitigation hatcheries
27 approved by the department under RCW 75.20.090 (as recodified by
28 section 129, chapter 107, Laws of 2000), surplus of the operational
29 needs of the hatchery, shall be allowed to continue to spawn under
30 natural conditions and the eggs and sperm from those fish shall not be
31 destroyed pursuant to orders or other requirements of the federal
32 government unless:

33 (1) The order from the federal agency is in writing and is signed
34 by the appropriate federal official;

35 (2) The order has provided clear directions to assure that stocks
36 of fish listed as threatened or endangered will not be accidentally or
37 intentionally directed to be killed and that execution of such order

1 will not constitute a violation of the prohibition on take included in
2 the federal endangered species act;

3 (3) The federal agency order cites the specific federal regulation
4 that contains criteria as to how various stocks of fish are to be
5 distinguished from one another and that surplus hatchery fish,
6 including their eggs and sperm must be destroyed;

7 (4) The basis for the order is genetic testing of scales or other
8 parts of fish that allows accurate placement of stocks of fish into
9 distinct categories;

10 (5) Surplus hatchery-reared fish have been verified to be
11 genetically different than the naturally spawning fish;

12 (6) The stock differentiation is based on sound science and has
13 been subjected to peer review that includes at least three scientists
14 with a high degree of expertise in fish genetics chosen by the
15 department chairs of two state universities' fishery programs. The
16 peer review panel shall write a written report of the findings and
17 conclusions;

18 (7) The number of fish in the population is of an adequate number
19 to adequately restore the run without hatchery augmentation;

20 (8) The evaluation of fish stocks includes an estimate of the
21 extent that various stocks have strayed and the number of years that
22 said stocks have strayed; and

23 (9) The extent that indigenous stocks have intermixed with other
24 indigenous stocks or with other hatchery stocks.

25 NEW SECTION. **Sec. 5.** (1) A study shall be conducted on ways to
26 increase the returns of stocks of anadromous fish listed as threatened
27 or endangered under the federal endangered species act. The goal of
28 the study is to better manage fish harvesting activities and to improve
29 the selectivity of fishing methods to increase returns of stocks with
30 low numbers while allowing the continued harvest of abundant stocks.
31 The study shall consider all the various methods of allowing improved
32 harvest management and selective harvest strategies and associated
33 harvest gear that can serve as an alternative to a full conservation
34 closure that would restrict all fishing activity, including those that
35 have a very small impact on listed stocks.

36 (2) In conducting the study, the department of fish and wildlife
37 may form an advisory committee that includes representatives of major
38 fishing groups and entities with expertise in the topics.

1 (3) The results of the study shall be included in a report to the
2 governor and the legislature by December 1, 2000.

3 NEW SECTION. **Sec. 6.** The state fish and wildlife commission shall
4 establish escapement goals for each stock of anadromous salmonids that
5 has been listed as threatened or endangered under the federal
6 endangered species act. For each stock there shall be two types of
7 escapement goals: A minimum escapement goal that when reached would
8 qualify the particular stock of fish for removal from the federal
9 listing; and a optimal escapement goal that would allow sufficient fish
10 to fully use the habitat that is currently available.

11 For each stock of fish that does not meet the minimum escapement
12 goal, the commission shall provide for the management of the harvest so
13 that spawning escapement levels are increased by equal amounts in each
14 of the subsequent two life cycles so that the minimum escapement goals
15 are fully achieved and maintained. Progress toward reaching these
16 milestones shall be included in the report required under section 2 of
17 this act.

18 **Sec. 7.** RCW 75.08.012 (as recodified by 2000 c 107 s 126) and 2000
19 c 107 s 2 are each amended to read as follows:

20 Wildlife, fish, and shellfish are the property of the state. The
21 commission, director, and the department shall preserve, protect,
22 perpetuate, and manage the wildlife and food fish, game fish, and
23 shellfish in state waters and offshore waters.

24 The department shall conserve the wildlife and food fish, game
25 fish, and shellfish resources in a manner that does not impair the
26 resource. In a manner consistent with this goal, the department shall
27 seek to maintain the economic well-being and stability of the fishing
28 industry in the state. The department shall promote orderly fisheries
29 and shall enhance and improve recreational and commercial fishing in
30 this state. In carrying out this policy, the department shall take
31 action to assure that sufficient escapement of stocks of anadromous
32 salmonids listed under the federal endangered species act is achieved
33 consistent with section 6 of this act.

34 The commission may authorize the taking of wildlife, food fish,
35 game fish, and shellfish only at times or places, or in manners or
36 quantities, as in the judgment of the commission does not impair the
37 supply of these resources.

1 The commission shall attempt to maximize the public recreational
2 game fishing and hunting opportunities of all citizens, including
3 juvenile, disabled, and senior citizens.

4 Recognizing that the management of our state wildlife, food fish,
5 game fish, and shellfish resources depends heavily on the assistance of
6 volunteers, the department shall work cooperatively with volunteer
7 groups and individuals to achieve the goals of this title to the
8 greatest extent possible.

9 Nothing in this title shall be construed to infringe on the right
10 of a private property owner to control the owner's private property.

11 **Sec. 8.** RCW 77.04.055 and 2000 c 107 s 204 are each amended to
12 read as follows:

13 (1) In establishing policies to preserve, protect, and perpetuate
14 wildlife, fish, and wildlife and fish habitat, the commission shall
15 meet annually with the governor to:

16 (a) Review and prescribe basic goals and objectives related to
17 those policies; and

18 (b) Review the performance of the department in implementing fish
19 and wildlife policies.

20 The commission shall maximize fishing, hunting, and outdoor
21 recreational opportunities compatible with healthy and diverse fish and
22 wildlife populations. In carrying out this policy, the commission
23 shall take action to assure that sufficient escapement of stocks of
24 anadromous salmonids listed under the federal endangered species act is
25 achieved consistent with section 6 of this act.

26 (2) The commission shall establish hunting, trapping, and fishing
27 seasons and prescribe the time, place, manner, and methods that may be
28 used to harvest or enjoy game fish and wildlife.

29 (3) The commission shall establish provisions regulating food fish
30 and shellfish as provided in RCW 75.08.080 (as recodified by section
31 127, chapter 107, Laws of 2000).

32 (4) The commission shall have final approval authority for tribal,
33 interstate, international, and any other department agreements relating
34 to fish and wildlife.

35 (5) The commission shall adopt rules to implement the state's fish
36 and wildlife laws.

37 (6) The commission shall have final approval authority for the
38 department's budget proposals.

1 (7) The commission shall select its own staff and shall appoint the
2 director of the department. The director and commission staff shall
3 serve at the pleasure of the commission.

4 NEW SECTION. **Sec. 9.** (1) Sections 1, 2, and 5 through 8 of this
5 act are necessary for the immediate preservation of the public peace,
6 health, or safety, or support of the state government and its existing
7 public institutions, and take effect June 8, 2000.

8 (2) Sections 3 and 4 of this act are necessary for the immediate
9 preservation of the public peace, health, or safety, or support of the
10 state government and its existing public institutions, and take effect
11 immediately.

12 NEW SECTION. **Sec. 10.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

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