
SENATE BILL 5463

State of Washington

57th Legislature

2001 Regular Session

By Senators Morton, Hochstatter, Stevens, Oke and McCaslin

Read first time 01/24/2001. Referred to Committee on Natural Resources, Parks & Shorelines.

1 AN ACT Relating to surplus hatchery-reared fish; adding a new
2 section to chapter 77.12 RCW; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** (1) The legislature finds that the methods
5 by which salmonids are currently propagated in waters of the state
6 evolved over many decades are too complex to be instantly replaced
7 without also placing the fisheries resource, dependent and affected
8 communities, and the state's economy at unnecessary risk. The state,
9 and public and private entities approved by the state, have made
10 considerable investments in facilities to propagate salmonids and have
11 been done voluntarily or to fulfill mitigation requirements. The
12 legislature finds that federal fishery agencies are mandating that
13 major modifications be implemented immediately without a thorough
14 analysis of the impacts, an evaluation of less impacting alternatives,
15 or documentation of the anticipated impacts. The legislature finds
16 there are questions as to whether federal agencies have based their
17 policies on only one of a number of possible interpretations of federal
18 law. The legislature finds that the state's fishery resource,
19 dependent and affected communities, and the state's economy could be

1 unnecessarily and permanently harmed by overly precipitous federal
2 action.

3 (2) Until June 30, 2003, to the extent not inconsistent with
4 federal law, there shall be a moratorium placed on implementation of
5 orders issued by federal fishery agencies that do not comply with the
6 provisions of section 2 of this act. During the period the moratorium
7 is in effect, representatives of the executive and the legislative
8 branches of the state of Washington shall consult with their
9 counterparts in the states of Oregon, Idaho, and Montana and involved
10 federal fishery agencies, to examine the basis for federal policies
11 that order destruction of significant populations of salmonids and
12 their eggs and sperm, and to evaluate alternatives that have less
13 impact to the salmonid resource, to dependent and affected communities,
14 and to each state's economy.

15 (3) By December 15, 2002, the department of fish and wildlife shall
16 submit a report that provides a list of the alternative policies that
17 were considered together with the estimated impact of each alternative
18 to the fishery resource, to dependent and affected communities, and to
19 Washington's economy. The report shall be submitted to the chief clerk
20 of the house of representatives and the secretary of the senate.

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

23 To the extent not inconsistent with federal law, all fish reared in
24 state-funded hatcheries and fish reared in mitigation hatcheries
25 approved by the department under RCW 77.55.080, surplus of the
26 operational needs of the hatchery, shall be allowed to continue to
27 spawn under natural conditions and the eggs and sperm from those fish
28 shall not be destroyed pursuant to orders or other requirements of the
29 federal government unless:

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

32 (2) The order has provided clear directions to assure that stocks
33 of fish listed as threatened or endangered will not be accidentally or
34 intentionally directed to be killed and that execution of such order
35 will not constitute a violation of the prohibition on take included in
36 the federal endangered species act;

37 (3) The federal agency order cites the specific federal regulation
38 that contains criteria as to how various stocks of fish are to be

1 distinguished from one another and that surplus hatchery fish,
2 including their eggs and sperm must be destroyed;

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

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

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

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

16 (8) The evaluation of fish stocks includes an estimate of the
17 extent that various stocks have strayed and the number of years that
18 said stocks have strayed; and

19 (9) The extent that indigenous stocks have intermixed with other
20 indigenous stocks or with other hatchery stocks.

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