

SENATE BILL REPORT

SB 6454

As of January 23, 2020

Title: An act relating to local salmon habitat recovery planning in critical areas.

Brief Description: Concerning local salmon habitat recovery planning in critical areas.

Sponsors: Senators Salomon, Liias, Nguyen, McCoy, Wilson, C., Das and Hasegawa.

Brief History:

Committee Activity: Local Government: 1/23/20.

Brief Summary of Bill

- Directs the Department of Fish and Wildlife to adopt conservation and restoration guidelines to assist counties and cities in the preservation and enhancement of anadromous fisheries.
- Requires counties and cities to review and update critical areas policies and development regulations to implement the guidelines.

SENATE COMMITTEE ON LOCAL GOVERNMENT

Staff: Greg Vogel (786-7413)

Background: Growth Management Act. The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities. The GMA also establishes a significantly wider array of planning duties for 29 counties, and the cities within those counties, obligated to satisfy all planning requirements of the GMA.

The GMA directs jurisdictions fully planning under the GMA to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans are implemented through locally adopted development regulations, both of which are subject to review and revision requirements prescribed in the GMA.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Counties and cities within those counties must take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of the GMA as follows:

- on or before June 30, 2015, and every 8 years thereafter, for King, Pierce, and Snohomish counties and the cities within those counties;
- on or before June 30, 2016, and every 8 years thereafter, for Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, and Whatcom counties and cities within those counties;
- on or before June 30, 2017, and every 8 years thereafter, for Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, and Yakima counties and the cities within those counties; and
- on or before June 30, 2018, and every 8 years thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

Growth Management Act - Critical Areas. The GMA requires all cities and counties in Washington to adopt critical area regulations. Critical areas include the following areas and ecosystems: wetlands; areas with a critical recharging effect on aquifers used for potable water; fish and wildlife habitat conservation areas; frequently flooded areas; and geologically hazardous areas. Counties and cities are required to include the best available science in developing policies and development regulations to protect the functions and values of critical areas. Counties and cities must also give special consideration to conservation and protection measures necessary to preserve or enhance anadromous fisheries. All jurisdictions are required to review, evaluate, and if necessary, revise their critical areas ordinances according to the update schedule.

The Department of Commerce (Commerce) is required to adopt guidelines to guide the classification of critical areas. The critical areas guidance document produced by Commerce is called the *Critical Areas Handbook*.

Salmon Recovery Planning. Seventeen populations of salmon and steelhead in Washington are currently listed as threatened or endangered under the federal Endangered Species Act (ESA). "Endangered" means a species is in danger of extinction throughout all or a significant portion of its range. "Threatened" means a species is likely to become endangered within the foreseeable future. Listed populations include distinct genetic strains of Chinook, coho, chum and sockeye salmon as well as steelhead across 75 percent of the state.

The ESA requires the federal government to develop recovery plans. The ESA is concerned with the extinction risk faced by an entire evolutionary significant unit (ESU) defined by regional geographic extent and genetic differentiation. The National Marine Fisheries Service has determined recovery plans need to be prepared at an ESU scale, or regional basis.

Federal and state governments have a responsibility to ensure tribal treaty rights are upheld, which in part requires that fish habitats are protected and improved.

In Washington State, regional salmon recovery organizations have been formed to coordinate the development and implementation of regional salmon recovery plans. Recovery plans are

a resource for local planners regarding listed salmonids and priority habitat recommendations in their regions. Recovery plans include watershed profiles, as well as lead entity strategies.

The Washington State Department of Fish and Wildlife (DFW) is required by law to protect, perpetuate, and manage salmon and steelhead in state and offshore waters. As the agency responsible for the state's hatchery and harvest management, DFW is involved in developing, implementing, and monitoring Washington's salmon recovery efforts. DFW priorities include:

- restore federally listed populations through the six salmon recovery plans;
- create and maintain selective and sustainable fisheries;
- protect and restore habitat;
- retool hatchery operations to support wild fish recovery;
- further state-tribal comanagement;
- develop new strategic partnerships; and
- ensure accountability by tracking and reporting performance.

DFW's salmon conservation recovery engine provides access to up-to-date information about salmon population status statewide and key information related to salmon species, recovery, hatcheries, habitat, and harvest. In 2009, DFW published *Land Use Planning for Salmon, Steelhead and Trout* to help integrate local land use planning programs and state salmonid recovery efforts. This guidance document translates existing science into planning tools, including model policies and regulations that can be incorporated into GMA and Shoreline Management Act planning programs to protect salmonids and prevent further loss or degradation of habitat.

Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications is a partial update of an earlier document titled *Management Recommendations for Washington Priority Habitats: Riparian*, from 1997. Volume 2 of that document is DFW's draft management recommendations to inform local government decisions related to riparian ecosystems and aquatic resources. A draft of Volume 2 was made available in 2018.

Commerce minimum guidelines provide guidance for addressing "waters of the state" as fish and wildlife habitat conservation areas.

Summary of Bill: DFW is directed to adopt conservation and restoration guidelines to assist counties and cities in preserving and enhancing anadromous fisheries, as part of designating and protecting critical areas under the GMA. The guidelines must identify:

- priority marine nearshore, as well as, stream segments and riparian habitat representing the most important habitat areas to preserve through public acquisition or other conservation measures, including core spawning areas, as well as, migratory and rearing corridors for salmon species;
- incompatible land uses with salmon recovery and habitat preservation; and
- methods for improving and preserving salmon habitat.

DFW must consult with tribal fisheries restoration experts and other interested parties in developing the guidelines. DFW and Commerce may exclude a county or city from elements of the guidelines if the county or city has no or minimal areas of critical habitat for salmon stocks listed under the ESA. DFW must complete the guidelines by January 1, 2021, to

allow cities and counties to update critical areas policies and development regulations as part of their next periodic review.

Counties and cities are required to review and update critical areas policies and development regulations to implement the guidelines. Counties and cities may adopt land use regulations, acquire critical habitat lands, enact incentives, and establish other measures and policies to implement the guidelines.

Counties and cities within those counties with review and updates of comprehensive plans due in 2023 and 2024, must begin implementing the guidelines on January 1, 2021, to include implementation of the guidelines as part of the review and update. All other counties and cities within those counties must implement the guidelines by June 30, 2026.

DFW and Commerce are directed to review and report on county and city adoption of critical areas policies and development regulations that implement the guidelines by December 1, 2023.

Commerce is required to consult with DFW regarding conservation and protection of anadromous fisheries in developing critical areas guidelines, utilizing the newly established DFW guidelines.

Representatives of conservation organizations are added as interested parties to be consulted with by Commerce in the adoption of guidelines regarding the classification of agricultural lands, forestlands, mineral resource lands, and critical areas.

Appropriation: None.

Fiscal Note: Requested on January 1, 2020.

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

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

Staff Summary of Public Testimony: PRO: In reviewing the ten year Chinook management plan and looking at the Duwamish area, there are constraints on salmon habitat, particularly around estuaries. This is a missing piece of habitat that is important to tribal communities along this river. There are all these efforts in reviving rivers, and then I read in the Seattle Times, how that estuary land is being converted to a warehouse space. There is frustration with the left hand and right hand not coordinating on identifying the most valuable salmon habitat recovery land to focus on. This bill attempts to get at that.

CON: We do a lot of work around salmon recovery that is good but also a lot that is just spinning our wheels. This bill adds a duplicative burden on local governments. This would be a hindrance to permit timelines as well. We need to make our processes work together in order to further economic development and protect our environment.

OTHER: Salmon habitat restoration work is valuable but there are challenges related to baseline data and how effective current regulations are. Counties are already required to give

special consideration to preserve or enhance fisheries. It makes more sense to put efforts toward data gathering to better understand if a proposal like this is even needed. Salmon habitat protection is already a significant part of local government regulations. This proposal requires a major update to critical areas regulations. The state needs to provide funding if this bill is passed.

Salmon are critical to Washington's cultural, biological, and ethical interests, yet even with the efforts mentioned, we are not seeing the results that we want for salmon recovery. Yet also, many people acknowledge the need for change. As we look at anticipated increases in population growth, changing weather, climate change, and invasive species, there is a need to do more for salmon and orca recovery efforts. One specific concern with the bill is the short timeline for DFW to do this work.

Persons Testifying: PRO: Senator Jesse Salomon, Prime Sponsor.

CON: Jan Himebaugh, Building Industry Association of Washington.

OTHER: Greg Tompkins, Walla Walla County Commissioner; Rob Gelder, Kitsap County Commissioner; Wes McCart, Stevens County Commissioner; Margen Carlson, Habitat Program Director, Washington Department of Fish and Wildlife.

Persons Signed In To Testify But Not Testifying: No one.