
Environment & Energy Committee

HB 1117

Brief Description: Promoting salmon recovery through revisions to the state's comprehensive planning framework.

Sponsors: Representatives Lekanoff, Fitzgibbon, Bateman, Simmons, Ramel, Peterson, Goodman, Ryu, Kloba, Chopp, Pollet, Macri and Davis.

Brief Summary of Bill

- Adds a goal of salmon recovery to the listed goals of the Growth Management Act (GMA).
- Requires the land use element of comprehensive plans adopted under the GMA to include a strategy that achieves net ecological gain of salmon habitat.
- Requires the capital facilities element and transportation element of comprehensive plans adopted under the GMA to address the elimination of fish passage barriers.
- Requires the Department of Fish and Wildlife (WDFW) to adopt rules that establish criteria for net ecological gain and consistency with applicable regional salmon recovery plans that certain counties must meet through the adoption of comprehensive plans.
- Requires WDFW to monitor the progress that certain counties and cities have made toward achieving net ecological gain.
- Requires WDFW to provide a report of its monitoring to the Governor, the Legislature, and local governments.
- Requires development regulations that protect critical areas to apply certain mitigation requirements.

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

Hearing Date: 1/21/21

Staff: Robert Hatfield (786-7117).

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 Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities.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 28 counties, and the cities within those counties, that are obligated to satisfy all planning requirements of the GMA. These jurisdictions are sometimes referred to as "fully planning" under the GMA.

The GMA directs fully planning jurisdictions to adopt internally consistent comprehensive land use plans. Comprehensive plans are implemented through locally adopted development regulations, and both the plans and the local regulations are subject to review and revision requirements prescribed in the GMA. Comprehensive plans must contain certain required elements, including a transportation element, a land use element, and a capital facilities plan element, among others. In developing their comprehensive plans, counties and cities must consider various goals set forth in statute, including, for example, urban growth, housing, and economic development.

Growth Management Act - Comprehensive Plan Updates.

Counties and cities are required to review and, if needed, revise their comprehensive plans and development regulations every eight years. Counties, and the cities within them, are grouped into four different year classes for purposes of when the obligation to review and revise their comprehensive plans commences. The next round of required comprehensive plan updates begins with King, Kitsap, Snohomish, and Pierce counties, and the cities within those counties, in 2024.

Regional Salmon Recovery Plans.

Recovery plans are developed and adopted under the federal Endangered Species Act when a species has been listed as threatened or endangered. Recovery plans are developed with the input of multiple parties, including federal, state, and tribal governments. Recovery plans for salmon and steelhead are published by the National Oceanic and Atmospheric Administration - Fisheries. Regional salmon recovery plans have been adopted for multiple regions within Washington, including Puget Sound. The Puget Sound Salmon Recovery Plan includes individual recovery plans for individual watersheds within the broader Puget Sound region.

Aquatic Resources Mitigation Act.

Under state and federal law, a project proponent whose action would impact aquatic resources must first attempt to avoid and minimize that impact. For unavoidable impacts, compensatory mitigation is required to replace the loss of aquatic resource function. The Aquatic Resources Mitigation Act sets forth a number of mitigation options that project proponents may select in complying with mitigation requirements.

Shoreline Management Program.

The Shoreline Management Act (SMA) involves a cooperative regulatory approach between local governments and the state. The Department of Ecology and local governments are authorized to adopt necessary and appropriate rules for implementing the provisions of the SMA.

At the local level, SMA regulations are developed in local shoreline master programs (master programs). All counties and cities with shorelines of the state are required to adopt master programs that regulate land-use activities in shoreline areas of the state.

Summary of Bill:

Growth Management Act - Definitions.

The following terms are added as defined terms within the Growth Management Act (GMA): net ecological gain, compensatory mitigation ratio, and mitigation hierarchy requirement.

Net ecological gain is defined as a standard for a comprehensive plan adopted under the GMA in which the ecological integrity within the overall planning area is improved and enhanced during the planning period as a result of the measures adopted by the planning body, including no net loss of ecological function with respect to the permitting of individual projects and the advancement of ecological function through the appropriate selection of publicly funded projects, including voluntary grant programs, salmon recovery projects, ecological improvements made through the municipal stormwater permit process, and investments made as a result of the capital facilities element and transportation element of the comprehensive plan.

Compensatory mitigation ratio is defined as a measurement of the size, temporal duration, or quality of mitigation required by a permitting agency in order to ensure that impacts to regulated aspects of the environment from an activity subject to a permit are fully mitigated over the life of the activity or project subject to the permit.

Mitigation hierarchy requirement means that a proponent must first attempt to avoid impacts where avoidance is reasonably attainable, must then attempt to minimize impacts where avoidance is not reasonably attainable, and must then mitigate any remaining impacts where avoidance and minimization are not reasonably attainable.

Growth Management Act - Goals.

Salmon recovery is added as a goal under the GMA. Under the salmon recovery goal, it is a goal of the GMA to support the recovery and enhancement of salmon stocks through the achievement of net ecological gain from planning under the GMA in accordance with rules adopted pursuant to the GMA in order to fulfill Washington's tribal treaty obligations, support nontribal commercial and recreational fisheries, and achieve the delisting and recovery of threatened or endangered salmon and steelhead runs under the federal Endangered Species Act.

Comprehensive Plans - Net Ecological Gain.

Beginning with plan updates adopted after January 1, 2024, the land use element of comprehensive plans must, in accordance with rules adopted pursuant to the GMA, include a strategy that, through a combination of regulatory and nonregulatory programs, achieves net ecological gain of in-water and upland habitats, vegetation, and natural features that contribute to salmon habitat, water quantity and quality in waters of the jurisdiction that contribute to salmon and anadromous fish habitat on a watershed basis, including applicable elements of salmon recovery plans adopted pursuant to the federal Endangered Species Act.

This strategy must be developed after consultation with each federally recognized Indian tribe with property, tribal reservation land, or usual and accustomed fishing areas in, adjacent to, or directly affected by the planning jurisdiction. The achievement of net ecological gain may rely on activities or mitigation carried out by a jurisdiction that are physically located outside the jurisdiction.

Development regulations adopted pursuant to the net ecological gain requirement may not require individual private projects to achieve net ecological gain. Development regulations adopted pursuant to the net ecological gain requirement must require that projects owned by public entities including, but not limited to, state agencies, counties, cities, towns, public utilities districts, schools, libraries, and transportation agencies, achieve net ecological gain.

The capital facilities element and transportation element of comprehensive plans must address salmon recovery through the removal of fish passage barriers.

Criteria for Net Ecological Gain.

The Department of Fish and Wildlife (WDFW), in collaboration with the Washington State Academy of Sciences, must adopt rules to establish criteria for net ecological gain and consistency with the applicable portions of applicable regional salmon recovery plans that counties and cities fully planning under the GMA must meet through adoption of their comprehensive plans in order to support salmon recovery.

The rules adopted by WDFW must ensure that, where appropriate, the interjurisdictional coordination process required by the GMA addresses the issue of salmon recovery.

The rules adopted by WDFW may not require or assume that the proponents of individual

private projects will be responsible for achieving net ecological gain. Rules adopted by WDFW must ensure that individual private projects achieve no net loss of ecological function, and that net ecological gain is achieved through the appropriate selection of publicly funded projects, and voluntary projects whose purpose is salmon recovery but which may receive funding from either public or private sources.

The WDFW must establish current environmental baseline conditions within counties and cities fully planning under the GMA, and must then monitor progress toward salmon recovery goals in those jurisdictions. The WDFW must submit a report of its monitoring to the Governor, the Legislature, and affected local governments beginning in 2022 and every other year thereafter.

Mitigation Hierarchy Requirements and Compensatory Mitigation Requirements.

Development regulations that protect critical areas must apply mitigation hierarchy requirements and compensatory mitigation requirements. Mitigation imposed under both the Aquatic Resources Mitigation Act and the Shoreline Management Act must also apply mitigation hierarchy requirements and compensatory mitigation requirements.

Null and Void Clause.

If specific funding for the purposes of the bill, referencing the bill or chapter number, is not provided by June 30, 2021, in the Omnibus Appropriations Act, the bill is null and void.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.