
**Rural Development, Agriculture &
Natural Resources Committee**

HB 1382

Brief Description: Streamlining the environmental permitting process for salmon recovery projects.

Sponsors: Representatives Tharinger, Dolan, Fitzgibbon, Wylie, Hackney and Callan.

Brief Summary of Bill

- Creates the Habitat Recovery Pilot Program (Pilot Program) for salmon restoration projects that meet certain criteria.
- Exempts qualifying projects from certain local permitting processes.
- Establishes a consultation and review process for projects under the Pilot Program.
- Expires the Pilot Program on June 30, 2025.

Hearing Date: 2/2/21

Staff: Robert Hatfield (786-7117).

Background:

Hydraulic Project Approvals.

A person must obtain a Hydraulic Project Approval (HPA) prior to commencing any construction project that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. Hydraulic Project Approvals are issued by the Department of Fish and Wildlife (WDFW) to ensure the proper protection of fish life. To receive an HPA, the

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applicant must provide certain information to the WDFW. This information includes general plans for the overall project and complete plans for the proper protection of fish life.

A person may file a hydraulic project pre-application with the WDFW to determine whether a project requires a complete application for a hydraulic project permit. The WDFW must provide tribes and local governments a seven-calendar-day review and comment period for pre-applications. If the WDFW determines that a complete application is required, the applicant would then be required to submit a complete application as defined in statute and the WDFW would process the permitting decision.

Fish Habitat Enhancement Projects.

Fish habitat enhancement projects that meet a certain set of criteria may qualify for a streamlined administrative review and approval process. These are projects that are expected to result in beneficial impacts to the environment, and are of the size and scale, as determined by the WDFW, to accomplish one or more of the following:

- elimination of human-made or human-caused fish passage barriers;
- restoration of an eroded or unstable streambank employing the principle of bioengineering;
- placement of woody debris or other instream structures that benefit naturally reproducing fish stocks; or
- restoration of native kelp or eelgrass beds and native oysters.

Additionally, to qualify for streamlined review, a project must also be approved by certain sponsoring entities, including the WDFW, a conservation district, the Department of Transportation, a city or county, or other formal review and approval process.

In addition to a streamlined HPA process, projects that meet the criteria for fish habitat enhancement projects are eligible for exemption from the State Environmental Policy Act and exemption from local government permits and fees.

Floodplain Management.

The Department of Ecology (Ecology) is the lead state agency for floodplain management, which includes flood risk reduction and protection of floodplain environmental functions. Local governments are responsible for implementing local floodplain management plans as well as the National Flood Insurance Program (NFIP). Local governments may receive technical assistance from Ecology.

The NFIP, managed by the Federal Emergency Management Agency, makes federally backed flood insurance available in those states and communities that agree to adopt and enforce floodplain management ordinances to reduce future flood damage.

Summary of Bill:

Habitat Recovery Pilot Program.

The Habitat Recovery Pilot Program (Pilot Program) is created. In order to qualify to be included in the Pilot Program, an environmental restoration project must directly benefit freshwater, estuarine, or marine fish, or the habitat they rely on. In addition, the project must be included on a list of projects reviewed, approved, or funded by one of a number of specified entities, including, among others:

- The Bonneville Power Administration Restoration Program;
- The Brian Abbott Fish Passage Barrier Removal Board;
- The Salmon Recovery Funding Board; and
- The Family Forest Fish Passage Program.

A project reviewed under the Pilot Program must document consistency with local, state, and federal flood risk reduction requirements. A project may not be reviewed under the Pilot Program if the local government in which the project will be located determines that the project does not meet applicable flood risk reduction requirements, or otherwise determines that the project raises concerns regarding public health and safety, and the local government provides timely notice of its determination to the Department of Fish and Wildlife (WDFW).

Permitting.

Projects approved for inclusion in the Pilot Program and that are reviewed and approved according to the provisions of the Pilot Program are not required to prepare an Environmental Impact Statement under the State Environmental Policy Act. Projects are also not required to obtain local or state permits or approvals other than the permit issued under the Pilot Program, except permits minimally necessary as a requirement of participation in a federal program.

A permit under the Pilot Program is required for any project that meets the criteria for inclusion in the Pilot Program and that would otherwise be required to obtain a Hydraulic Project Approval (HPA). An applicant for a permit under the Pilot Program must submit an application through the WDFW online application system, and must at the same also submit a copy of the application to the appropriate local government and to the Pilot Program's multiagency permitting team. When the WDFW concludes that a complete application has been submitted under the Pilot Program and copies of the application have been provided as required by the Pilot Program, the WDFW must provide notice to the local government within whose geographical jurisdiction the project will be located, to interested tribes, and to the members of the multiagency permitting team of receipt of a complete permit application.

Review and Consultations.

The WDFW must, in a timely manner, provide a copy of any application seeking review under the Pilot Program and must thereafter coordinate with interested tribes as it implements the Pilot Program.

If the local government within whose geographical jurisdiction the project would be located, or any member of the multiagency permitting team, requests consultation within 15 days of receiving a copy of the complete project application, the WDFW shall place the application on hold and immediately convene a meeting of the multiagency permitting team and the appropriate local government to review and evaluate the project. Otherwise, the WDFW must evaluate and make a decision on the application not sooner than 15 days, and not later than 45 days, after receipt of a complete permit application.

All parties involved in the consultation process must work in good faith to expedite permitting. Any party with concerns must provide the basis for its concerns and potential pathways to address those concerns. Any party objecting to expedited permitting must provide a written basis for its objections to the WDFW or the multiagency permitting team.

Multiagency Permitting Team.

The multiagency permitting team is made up of representatives of the local government in whose geographical jurisdiction the project would be located, the WDFW, the Department of Ecology, the Recreation and Conservation Office, the Governor's Salmon Recovery Office, the Office of Archaeology and Historic Preservation, the Department of Natural Resources, and, when the project in question is located in the Puget Sound basin, the Puget Sound Partnership.

The WDFW and the multiagency permitting team must exclude from the Pilot Program any project if the WDFW or the multiagency permitting team concludes that the project may adversely impact human health, public safety, or the environment.

Appeals.

Any person aggrieved by the approval, denial, conditioning, or modification of a permit under the Pilot Program may appeal the decision pursuant to the Forest Practices Act for projects under the Family Forest Fish Passage Program or pursuant to the Hydraulic Code for all other projects.

Liability.

No civil liability may be imposed by any court on the state or its officers and employees for any adverse impacts resulting from a fish recovery pilot project permitted by the WDFW or the Department of Natural Resources under the criteria of the Pilot Program except upon proof of gross negligence or willful or wanton misconduct.

Expiration.

The Pilot Program expires on June 30, 2025.

Appropriation: None.

Fiscal Note: Requested on January 27, 2021.

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