

SENATE BILL REPORT

SB 5421

As Reported by Senate Committee On:
Agriculture, Water, Natural Resources & Parks, February 11, 2021

Title: An act relating to creating a salmon fisheries dispute resolution process.

Brief Description: Creating a salmon fisheries dispute resolution process.

Sponsors: Senator McCune.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 2/09/21, 2/11/21
[DPS-WM, DNP].

Brief Summary of First Substitute Bill

- Establishes a Puget Sound Salmon Commercial and Recreational Fisheries Advisory Board to review and evaluate salmon fisheries and allocation.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Majority Report: That Substitute Senate Bill No. 5421 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Van De Wege, Chair; Salomon, Vice Chair; Warnick, Ranking Member; Honeyford and Short.

Minority Report: Do not pass.

Signed by Senators Rolfes and Stanford.

Staff: Jeff Olsen (786-7428)

Background: Washington State and the Puget Sound treaty tribes co-manage salmon

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.

fisheries in Puget Sound subject to the terms of the Puget Sound Salmon Management Plan (PSSMP), under the continuing jurisdiction of the U.S. District Court for the District of Washington: *US v. WA*—1974, Boldt Decision. The PSSMP, developed by the state and tribal co-managers, is the implementation framework for the allocation, conservation, and equitable sharing principles of *US v. WA* that governs management of salmon resources in Puget Sound. The PSSMP defines the basis for deriving management objectives and allocation, prescribes procedures for information exchange and dispute resolution, and includes provisions for annual review and modification.

In 1999, Puget Sound Chinook salmon were listed under the Endangered Species Act. Since 2000, the Puget Sound co-managers have managed the fisheries through annual or multi-year agreements authorized by the National Oceanic and Atmospheric Administration, Fisheries Division. The Comprehensive Management Plan for Puget Sound Chinook: Harvest Management Component provides the current framework for managing fisheries in Puget Sound.

Similar to the other salmon and steelhead fisheries that occur in the *US v. WA* case area, the Puget Sound fisheries are planned during the North of Falcon process, which includes a series of public meetings involving federal, state, tribal, and industry representatives, as well as citizens.

Summary of Bill (First Substitute): The Washington Department of Fish and Wildlife (WDFW) must establish a Puget Sound Salmon Commercial and Recreational Fisheries Advisory Board (board). The board is composed of two representatives from nontribal salmon fishers and two recreational fishers, as well as two staff from WDFW. The nontribal commercial fishers must include one commercial purse seiner and one commercial gill netter. The commercial and recreational representatives must be nominated from their organization. The board must review and evaluate salmon fisheries and allocation within the established framework of the salmon management plan.

The board must be chaired by a dispute resolution technical advisor, with administrative support provided by WDFW. The advisor must be chosen by the WDFW director from candidates nominated by the board. The advisor must be an attorney well versed in mediation, with technical expertise in fisheries, and with extensive understanding of the history of disputes and deviations from the rule of law between tribal and nontribal fisheries.

WDFW must report to the Legislature by December 2022, regarding the activities of the board.

EFFECT OF CHANGES MADE BY AGRICULTURE, WATER, NATURAL RESOURCES & PARKS COMMITTEE (First Substitute):

- Removes two tribal representatives on the salmon fisheries advisory board and adds

- two recreational fishers.
- Requires the Department of Fish and Wildlife to report back to the Legislature by December 1, 2022, rather than 2021.
 - Renames the advisory board the Puget Sound Salmon Commercial and Recreational Fisheries Advisory Board.

Appropriation: None.

Fiscal Note: Available.

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 on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The Commercial Fisheries Advisory Board can bring people to the table in an open meeting to go over escapement goals, forecasts, and fishing times and areas. The board would be advisory, and would not be about allocation disputes between gear types. There have been nontribal fisheries disputes that are unresolved, impacting salmon harvests. This is the first year in 100 years there is no fishing in marine areas 10 and 11. The North of Falcon process is not working and there needs to be a process to resolve disputes with an advisory board.

CON: Salmon fisheries are managed under a complex federal and regional system including court decisions, federal acts, and treaties. A state mandated dispute resolution process has limited authority and it is concerning to create a process outside of the *U.S. v. Washington* decision. There is already a processes for input through the Fish and Wildlife Commission, the North of Falcon process, and the many ad hoc fishery advisory committees. Tribal fishing rights are constitutionally protected. Salmon are co-managed with tribes and the state of Washington, and co-managers already have a process for disputes. The state can not legislate tribes to participate in the dispute resolution process.

OTHER: Recreational fishers should be added to the advisory board. The WDFW has not advocated for sportfishers in the North of Falcon process. Negotiations between co-managers occur in a closed room. There have been legal challenges arguing the state has not been enforcing equitable sharing provisions under the Boldt decision. The state needs to follow federal law and implement the Boldt decision. Dispute resolution could be used as a tool to resolve differences. The salmon season setting process is broken and there needs to be a process to fix it. Nontribal fishers are not properly represented and need a voice in the process. There should be an annual reporting requirement regarding the 50/50 sharing of salmon.

Persons Testifying: PRO: Senator Jim McCune, Prime Sponsor; Shannon Moore, Puget Sound Gillnet Fishermen.

CON: Ron Warren, Washington Department of Fish and Wildlife; Chairman Shawn Yanity, Stillaguamish Tribe of Indians.

OTHER: Brett Rosson, Fish Northwest; Nello Picinich, Coastal Conservation Association; Andrew Marks, Coastal Conservation Association - Washington; Curt Smitch, Fish North West; Bob Cooper, CCA; George Harris, NW Marine Trade Association.

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