

# SENATE BILL REPORT

## SB 5619

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As of February 5, 2022

**Title:** An act relating to conserving and restoring kelp forests and eelgrass meadows in Washington state.

**Brief Description:** Conserving and restoring kelp forests and eelgrass meadows in Washington state.

**Sponsors:** Senators Lovelett, Conway, Das, Hasegawa, Nobles, Pedersen, Randall, Rolfes, Saldaña, Stanford, Van De Wege and Wilson, C.; by request of Department of Natural Resources.

**Brief History:**

**Committee Activity:** Agriculture, Water, Natural Resources & Parks: 1/20/22, 1/27/22 [DPS-WM].

Ways & Means: 2/05/22.

**Brief Summary of First Substitute Bill**

- Requires the Department of Natural Resources (DNR) to establish a Native Kelp Forest and Eelgrass Meadow Health and Conservation Plan (plan) that endeavors to conserve and restore at least 10,000 acres of kelp forests and eelgrass meadows by 2040.
- Requires DNR to develop a framework to identify and prioritize native kelp forest and eelgrass meadow areas in greatest need of conservation or restoration.
- Requires DNR to submit the plan to the Office of Financial Management and the Legislature by December 1, 2023, and establishes other reporting deadlines.

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### SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

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*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.*

**Majority Report:** That Substitute Senate Bill No. 5619 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, Rolfes, Short and Stanford.

**Staff:** Karen Epps (786-7424)

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Jed Herman (786-7346)

**Background:** State Management of Aquatic Lands. Aquatic lands are generally managed by the state and protected for the common good. The Legislature has designated the Department of Natural Resources (DNR) as the manager of the more than 2.6 million acres of state-owned aquatic lands. In managing these lands, DNR must support a balance of use demands and statutory goals such as public use, environmental protections, trade, transportation, and generating revenue consistent with those goals.

Types of Aquatic Land. Aquatic lands include the lands beneath navigable marine salt waters and fresh waters of the state. There are three categories of aquatic lands—tidelands, shorelands, and bedlands.

Tidelands are submerged lands and beaches exposed and submerged with the ebb and flow of the tides. Shorelands are the submerged lands lying along the edge of a river or lake, between the line of ordinary high water and the line of navigability. Tidelands and shorelands in front of or within two miles of a city are considered first-class tidelands and shorelands, and those lands more than two miles from a city are considered second-class tidelands and shorelands. Bedlands are those aquatic lands submerged at all times beneath navigable waters.

Kelp and Eelgrass. DNR has conducted annual aerial surveys of floating kelp canopy extent since 1989. Two species of canopy-forming kelp are monitored: bull kelp—*Nereocystis luetkeana*, and giant kelp—*Macrocystis integrifolia*. In January 2021, DNR started the Kelp Workgroup to facilitate collaboration and data sharing related to kelp research and monitoring in Puget Sound.

DNR monitors the abundance and distribution of eelgrass—*Zostera marina*—in greater Puget Sound as part of its stewardship work on state-owned aquatic lands. Based on 18 years of monitoring from 2000 to 2017, DNR estimates there are approximately 23,000 hectares of eelgrass in greater Puget Sound. The total amount of eelgrass in Puget Sound has remained relatively stable since the start of the monitoring program.

Community Engagement Plans. Pursuant to legislation enacted in 2021, DNR and certain other state agencies must create and adopt a community engagement plan that describes

planned engagement with overburdened communities and vulnerable populations for purposes of implementing the agency's environmental justice responsibilities. This plan must include best practices for outreach and communication, the use of special screening tools, processes that facilitate the inclusion of community members affected by agency decision-making, and methods for outreach and communication.

**Summary of Bill (First Substitute): Native Kelp Forest and Eelgrass Meadow Health and Conservation Plan.** Subject to available funding, DNR must work with partners to establish a Native Kelp Forest and Eelgrass Meadow Health and Conservation Plan (plan) that endeavors to conserve and restore at least 10,000 acres of native kelp forests and eelgrass meadows by 2040. The plan must be finalized and submitted to the Office of Financial Management (OFM) and the appropriate committees of the Legislature by December 1, 2023. The plan should address the potential loss of native kelp forest and eelgrass meadow habitat throughout Puget Sound and along the Washington State coastline and potential current and future stressors related to the decline of native kelp forests and eelgrass meadows.

In collaboration with partners, DNR must develop the plan to assess and prioritize areas for coordinated conservation and restoration actions. The plan must consist of the following elements:

- assessment and prioritization;
- identifying coordinated actions and success measures;
- monitoring; and
- reporting.

Together with partners, DNR must develop a framework to identify and prioritize native kelp forest and eelgrass meadow areas in greatest need of conservation or restoration. The framework must:

- utilize and build on existing research to map and prioritize areas of native kelp forests and eelgrass meadows throughout Puget Sound and along the coast at highest risk of permanent loss or contribute significant environmental, economic, and cultural benefits to tribal nations and local communities;
- identify research necessary to analyze and assess potential ecological, environmental, and community benefits of aquaculture of native seaweed species;
- map and prioritize native kelp forest and eelgrass meadow areas throughout Puget Sound and along the coast where they were historically present, identifying priority locations for restoration and where opportunities for partnership and collaboration exist that will accelerate progress towards the goal; and
- identify potential stressors impacting the health and vitality of native kelp forests and eelgrass meadows in prioritized areas in order to specifically address stressors in conservation and restoration efforts.

When developing coordinated actions and success measures, DNR must:

- conduct an assessment and inventory of existing tools relevant to conserving and

- restoring native kelp forests and eelgrass meadows and reducing stressors related to their decline;
- identify new or amended tools that would support the goals of the plan; and
- identify success measures to track progress toward the conservation and restoration goal.

When developing the plan, DNR must:

- involve impacted communities using a community engagement plan;
- consult with federally recognized tribal nations on native kelp forests and eelgrass meadows with important cultural and ecological values that are threatened by urbanization or other disturbances;
- engage and collaborate with various state and federal agencies; and
- engage with stakeholders that may have a vested and direct interest in the outcomes of the plan, including shellfish growers, the boating industry, and recreational user communities.

Reporting. By December 1, 2022, DNR must submit a report to OFM and the appropriate committees of the Legislature that includes community engagement plans and a schedule for plan development.

By December 1, 2023, DNR must submit the plan, including a map and justification of identified priority areas based on collaboratively developed criteria, and a list of potential tools and actions for conservation or restoration of these priority areas, together with a monitoring plan based on the identified success measures.

Subsequently, each biennium, DNR must continue to monitor the distributions and trends of native kelp forests and eelgrass meadows to inform adaptive management of the plan and coordinated partner actions. DNR must submit a report to the Legislature that describes the native kelp forest and eelgrass meadow conservation priority areas and monitoring approaches and findings, including success measures established in the plan.

Beginning December 1, 2024, and by December 1st of each even-numbered year thereafter, DNR must provide the appropriate committees of the Legislature and OFM with:

- an updated map of distributions and trends, and summary of success measures and findings, including relevant information from the prioritization process;
- an updated list summarizing potential stressors, prioritized areas, and corresponding coordinated actions and success measures, including any barriers to plan implementation and legislative or administrative recommendations to address those barriers;
- an update on the number of acres of native kelp forests and eelgrass meadows conserved by region, including restoration or loss in priority areas;
- an update on consultation with impacted tribal nations; and
- an update on DNR's community engagement plans.

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

- Modifies the Kelp Forest and Eelgrass Meadow Conservation Plan (Plan) to focus on native species.
- Requires the Plan to address awareness, action, and engagement tools being used by public and private entities in the Puget Sound region to raise awareness of native kelp forest and eelgrass meadow conservation.
- Requires the framework developed under the Plan to identify research necessary to analyze and assess potential benefits of aquaculture of native seaweed species.
- Amends the provision that, when identifying possible restoration sites, DNR should consider other ecosystem benefits, such as mitigation of the negative effects of ocean acidification.
- Requires DNR to engage and collaborate with state and federal agencies and engage with representatives from other stakeholder groups, including shellfish growers, the boating industry, and recreational user communities, that may have vested and direct interest in the outcomes of the plan.
- Requires that the December 1, 2022 report include community engagement plans and a schedule for Plan development.
- Requires the Plan be based on collaboratively based criteria and include a monitoring plan based on identified success measures.

**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 (Agriculture, Water, Natural Resources & Parks):** *The committee recommended a different version of the bill than what was heard.* PRO: This bill is important for aquatic forests. Kelp and eelgrass are integral to ecosystems for young salmonoids to survive but also are critical in the role that they play in carbon capture in the marine environment. This bill supports the Port of Seattle's agenda of restoring 40 acres of marine habitat in the Duwamish watershed and Elliot Bay. Kelp and eelgrass have cultural significance, are indicators of water quality, and provide the foundation of the Puget Sound food web. This bill builds upon the previously completed Puget Sound eelgrass plan and kelp conservation recovery plans. The previous work did not include Willapa Bay, Grays Harbor, and the Olympic coast and this bill bridges that gap and recognizes the need to include the outer coast as part of the conservation and restoration work. Kelp and eelgrass play an important role in attenuating wave height and shoreline erosion. The loss of eelgrass meadows and kelp forests are leading to the decline of biodiversity, weakening climate resilience, and declining fisheries. Orcas, salmon, rockfish,

endangered sunflower sea stars, and pinto abalone all rely on kelp and eelgrass. The bill should also consider ocean acidification benefits that could accrue from co-locating kelp and eelgrass restoration work with shellfish production, highlighting the need for native eelgrass, and adding a little bit on consultation with state and federal agency experts. The bill could also identify research that is needed on native seaweed aquaculture. In the future, co-locating shellfish with adjacent kelp or eelgrass may be the only way to produce shellfish. The bill will help to identify disease dynamics of eelgrass wasting disease and consider strategies to combat this emerging threat.

OTHER: Healthy eelgrass meadows go hand in hand with healthy and productive oyster beds. Burrowing shrimp eradicate entire ecosystems, the eelgrass, and the oysters, and solving that problem would go a long way to restoring eelgrass meadows. The bill should be specific to native species of eelgrass and oyster growers should be allowed to participate in the outreach process in the bill.

**Persons Testifying (Agriculture, Water, Natural Resources & Parks):** PRO: Senator Liz Lovelett, Prime Sponsor; Fred Felleman, Port of Seattle; Don Gourlie, Puget Sound Partnership; Gus Gates, Surfrider Foundation; Erin Meyer, Seattle Aquarium; Hilary Franz, Department of Natural Resources; Brian Considine, Department of Natural Resources; Cynthia Catton, Department of Natural Resources; Justin Allegro, The Nature Conservancy; David Troutt, Nisqually Indian Tribe; Bill Dewey, Taylor Shellfish Farms; Meg Chadsey.

OTHER: Troy Nichols, Willapa Grays Harbor Oyster Growers Association.

**Persons Signed In To Testify But Not Testifying (Agriculture, Water, Natural Resources & Parks):** No one.

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** PRO: The agency is in support of this bill. We believe the goal is overall protection of kelp and eel grass including the goal of protecting 10,000 acres of native eel grass. The focus should be on reversing the critical loss of eel grass. We see the bill as being helpful for targeting available federal funds. The bill should not be seen as a regulatory vehicle.

CON: This bill needs to include the mapping of both native and non-native eel grass species. We are interested in the recovery of king salmon and all eel grass species are important for this goal. The concern is that without mapping of non-native eel grass the shellfish industry will remove it to focus on growing shellfish to the detriment of salmon who use the eel grass, both native and non-native, for refuge. Why not map both species?

OTHER: We would support this bill if it includes the mapping of all eel grass species. Both native and non-native eel grass species are important in the recovery efforts of the Puget Sound.

**Persons Testifying (Ways & Means):** PRO: Brian Considine, Department of Natural

Resources; Justin Allegro, The Nature Conservancy.

CON: Robert Wenman, private citizen; Heather McFarlane; Laura Hendricks, Coalition To Protect Puget Sound Habitat.

OTHER: Darlene Schanfald.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.