

SENATE BILL REPORT

SB 6143

As of January 25, 2024

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, Kauffman, Hasegawa, Nobles and Saldaña.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 1/25/24.

Brief Summary of Bill

- Requires 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, as part of designating and protecting critical areas under the Growth Management Act.
- Requires counties and cities to review and update critical areas policies and development regulations to implement the guidelines.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Staff: Karen Epps (786-7424)

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 Originally enacted in 1990 and 1991, the GMA establishes land use designation for all Washington counties and cities, and additional planning duties for 29 counties, and the cities within those counties, obligated to satisfy all planning requirements of the GMA.

Comprehensive Plan Updates. Counties and cities are required to review and, if needed,

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revise their comprehensive plans and development regulations every ten years. Counties, and the cities within them, are grouped into four classes based on the year that their 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.

Implementation Progress Report. Counties and cities planning under the GMA that meet certain population criteria must provide the Department of Commerce (Commerce) with an implementation progress report detailing the progress they have achieved in implementing their comprehensive plan five years after the review and revision of their comprehensive plan. If a city or county has not implemented any specific actions identified in the most recent update to their comprehensive plan, the city or county must identify the need for such action in the implementation progress report. Cities and counties must adopt a work plan to implement any necessary regulations, zoning and land use changes, or take other legislative or administrative action identified in the implementation progress report and complete all work necessary for implementation within two years of submission of the implementation progress report.

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.

Regional Salmon Recovery Plans. Recovery plans are developed and adopted under the federal Endangered Species Act (ESA) 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.

Summary of Bill: The Department of Fish and Wildlife (WDFW) must 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.

WDFW must consult with tribal fisheries restoration experts and other interested parties in developing the guidelines. WDFW must complete the guidelines by January 1, 2025, to allow cities and counties to update critical areas policies and development regulations as part of their next periodic review or implementation progress report. WDFW 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.

Counties and cities must review and update critical areas policies and development regulations to implement the guidelines. Counties and cities must adopt land use regulations, enact incentives, and establish other measures and policies to implement the guidelines and consider the acquisition of critical habitat lands.

Counties and cities within those counties with review and updates of comprehensive plans due in 2024 must begin implementing the guidelines on January 1, 2025, to include implementation of the guidelines as part of the next required implementation progress report. All other counties and cities within those counties must implement or begin implementing the guidelines by January 1, 2025, in order to include implementation of the guidelines as part of their next required review and update of comprehensive plans.

Commerce must consult with DFW regarding conservation and protection of anadromous fisheries in developing critical areas guidelines, using 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. DFW and Commerce must review and report on county and city adoption of critical areas policies and development regulations that implement the guidelines by December 1, 2029.

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: PRO: There are some gaps in the critical areas law that need to be addresses so that it is clear what is best for salmon habitat and that is applied in land use decisions. The state has been working hard to recover salmon but as there is more development, salmon habitat is lost. This bill is an attempt to fix the issue.

CON: The riparian roundtable is looking at these same regulations and their report is due at the end of this year and this bill should be postponed until that report is submitted. It is important to wait for recommendations before making additional restrictions on riparian areas especially on rural land. There is concern about the amendments to the guidelines that Commerce developed for designating resource lands. DFW already has guidance that is considered part of the best available science package that every jurisdiction uses when updating its shoreline master program and critical areas regulations. This is not clear if it would create a conflict with the voluntary stewardship program. This bill requires DFW to adopt guidelines by January 1, 2025, in less than 7 months, and counties must start implementing the guidelines by January 1, 2025, which does not recognize the planning process or allow time for citizen input. This bill could require project applicants to do enhancements of surrounding areas in addition to their own land, which is likely to trigger takings claims. There are concerns about giving planning authority to DFW because they do not have experience creating guidelines. Critical areas ordinances are better set at the local level because they have experience and can balance the broader interests. Habitat recovery plans have already been developed.

OTHER: The bill seeks guidelines that counties and cities can integrate to help improve critical salmon habitat protection and recovery. Washington State has a robust set of law that are designed to direct development and ensure habitat protections at state and local levels, but they have not proven sufficient and are often disconnected from salmon recovery planning. There is a need to better integrate salmon recovery plans into growth management planning.

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

CON: Morgan Irwin, Association of Washington Business; Dan Wood, WA State Dairy Federation; Paul Jewell, Washington State Association of Counties; Tricia Gullion, Building Industry Association of Washington; John Worthington.

OTHER: Chris Conklin, WDFW; Don Gourlie, Puget Sound Partnership.

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