
SENATE BILL 5948

State of Washington

54th Legislature

1995 Regular Session

By Senators Drew, Gaspard, Oke, Owen, Haugen, McDonald, Rasmussen, Sutherland and Bauer

Read first time 02/16/95. Referred to Committee on Natural Resources.

1 AN ACT Relating to the authority of the state commission on fish
2 and wildlife; amending RCW 77.04.040, 77.04.055, 77.04.080, 75.08.080,
3 75.25.095, 75.30.060, 75.50.010, 75.50.020, 75.50.030, 75.50.040,
4 75.50.050, 75.50.070, 75.50.110, 75.50.130, 75.52.050, 75.08.014, and
5 77.04.060; adding a new section to chapter 43.300 RCW; creating new
6 sections; and providing an effective date.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** The legislature finds that the authority of
9 the state commission on fish and wildlife and the authority of the
10 director of the department of fish and wildlife need clarification for
11 the purposes of providing a unifying policy and a cooperative working
12 relationship between the decision-making entities of the department.
13 The legislature intends to improve the management of the fish and
14 wildlife resources of the state, to provide improved access for the
15 citizens of the state to the policymaking process, and to increase the
16 responsiveness of the agency to the needs of both the resource and the
17 people of the state.

18 The legislature finds that all fish, shellfish, and wildlife
19 species should be managed under a single comprehensive set of goals,

1 policies, and objectives, and that the fish and wildlife commission
2 should perform that function. The fish and wildlife commission shall
3 have a greater role in the selection of the director of the agency by
4 interviewing candidates and providing the governor with a list of
5 candidates from which the governor shall select the director.

6 The legislature finds that the director should have the final
7 authority to approve department agreements, but that the director
8 should work cooperatively with the commission to inform them of the
9 issues at hand, and to seek their approval. The director shall prepare
10 the department budget and shall administer the department budget, but
11 the director shall submit the proposed budget to the fish and wildlife
12 commission within sufficient time for the commission to hold public
13 hearings and to recommend changes to the director. The director shall
14 have rule-making authority for the day-to-day management of commercial
15 fisheries for food fish and shellfish within the overall policies set
16 by the commission.

17 **Sec. 2.** RCW 77.04.040 and 1993 sp.s. c 2 s 61 are each amended to
18 read as follows:

19 Persons eligible for appointment as members of the commission shall
20 have general knowledge of the habits and distribution of ((game)) fish
21 and wildlife and shall not hold another state, county, or municipal
22 elective or appointive office. In making these appointments, the
23 governor shall seek to maintain a balance reflecting all aspects of
24 ((game)) fish and wildlife. Persons eligible for appointment as fish
25 and wildlife commissioners shall not have a monetary interest in any
26 private business that is involved with consumptive or nonconsumptive
27 use of ((game)) fish or wildlife.

28 **Sec. 3.** RCW 77.04.055 and 1993 sp.s. c 2 s 62 are each amended to
29 read as follows:

30 (1) In establishing policies to preserve, protect, and perpetuate
31 wildlife, ((game)) fish, and wildlife and ((game)) fish habitat, the
32 commission shall meet annually with the governor to:

33 (a) Review and prescribe basic goals and objectives related to
34 those policies; and

35 (b) Review the performance of the department in implementing
36 ((game)) fish and wildlife policies.

1 The commission shall maximize (~~(game fish)~~) fishing, hunting, and
2 outdoor recreational opportunities compatible with healthy and diverse
3 fish and wildlife populations.

4 (2) The commission shall establish hunting, trapping, and fishing
5 seasons and prescribe the time, place, manner, and methods that may be
6 used to harvest or enjoy game fish and wildlife.

7 (3) The commission shall establish fishing seasons and prescribe
8 the time, place, manner, and methods that may be used to recreationally
9 harvest food fish and shellfish.

10 (4) The commission shall develop the overall goals, policies, and
11 objectives of the department of fish and wildlife and shall conduct
12 public hearings on the goals, policies, and objectives.

13 (5) The commission shall consult with and advise the director on
14 department agreements involving tribal, interstate, international, and
15 other issues.

16 (6) The commission shall make recommendations to the director for
17 the department's budget proposals after conducting public hearings on
18 the budget proposals.

19 (7) The commission shall participate in the legislative process to
20 assure that the approved agency budget reflects the goals, policies,
21 and objectives of the commission.

22 (8) The commission shall select its own staff, which shall serve at
23 the pleasure of the commission.

24 **Sec. 4.** RCW 77.04.080 and 1993 sp.s. c 2 s 64 are each amended to
25 read as follows:

26 Persons eligible for appointment by the governor as director shall
27 have practical knowledge of the habits and distribution of fish and
28 wildlife. (~~(The governor shall seek recommendations from the~~
29 ~~commission on the qualifications, skills, and experience necessary to~~
30 ~~discharge the duties of the position. When considering and selecting~~
31 ~~the director, the governor shall consult with and be advised by the~~
32 ~~commission.)) The governor shall request a list of at least three
33 qualified applicants for the position of director from the fish and
34 wildlife commission and shall select one of the qualified applicants
35 from the commission recommendations as the director. The commission
36 shall select an interim director to act during the period when the
37 governor is making the decision. The director shall receive the salary
38 fixed by the governor under RCW 43.03.040.~~

1 The director is the ex officio secretary of the commission and
2 shall attend its meetings and keep a record of its business.

3 The director may appoint and employ necessary departmental
4 personnel. The director may delegate to department personnel the
5 duties and powers necessary for efficient operation and administration
6 of the department. ((The department shall provide staff for the
7 commission.))

8 **Sec. 5.** RCW 75.08.080 and 1993 c 117 s 1 are each amended to read
9 as follows:

10 (1) The director may adopt, amend, or repeal rules as follows:

11 (a) Specifying the times when the taking of food fish or shellfish
12 for commercial purposes is lawful or unlawful.

13 (b) Specifying the areas and waters in which the taking and
14 possession of food fish or shellfish for commercial purposes is lawful
15 or unlawful.

16 (c) Specifying and defining the gear, appliances, or other
17 equipment and methods that may be used to take food fish or shellfish
18 for commercial purposes, and specifying the times, places, and manner
19 in which the equipment may be used or possessed.

20 (d) Regulating the possession, disposal, landing, and sale of food
21 fish or shellfish for commercial purposes within the state, whether
22 acquired within or without the state.

23 (e) Regulating the prevention and suppression of diseases and pests
24 affecting food fish or shellfish.

25 (f) Regulating the size, sex, species, and quantities of food fish
26 or shellfish that may be taken, possessed, sold, or disposed of for
27 commercial purposes.

28 (g) Specifying the statistical and biological reports required from
29 commercial fishermen, dealers, boathouses, or commercial processors of
30 food fish or shellfish.

31 (h) Classifying species of marine and freshwater life as food fish
32 or shellfish.

33 (i) Classifying the species of food fish and shellfish that may be
34 used for commercial purposes other than human consumption.

35 (j) Other rules necessary to carry out ((this title)) the
36 commercial utilization of food fish and shellfish and the purposes and
37 duties of the department.

1 (2) Subsections (1)(a), (b), (c), (d), and (f) of this section do
2 not apply to private tideland owners and lessees and the immediate
3 family members of the owners or lessees of state tidelands, when they
4 take or possess oysters, clams, cockles, borers, or mussels, excluding
5 razor clams, produced on their own private tidelands or their leased
6 state tidelands for personal use.

7 "Immediate family member" for the purposes of this section means a
8 spouse, brother, sister, grandparent, parent, child, or grandchild.

9 (3) Except for subsection (1)(g) of this section, this section does
10 not apply to private sector cultured aquatic products as defined in RCW
11 15.85.020. Subsection (1)(g) of this section does apply to such
12 products.

13 **Sec. 6.** RCW 75.25.095 and 1990 c 34 s 2 are each amended to read
14 as follows:

15 (~~Notwithstanding RCW 75.25.090,~~) ~~The~~ ~~(director)~~ commission may
16 adopt rules designating times and places for the purposes of family
17 fishing days when a recreational fishing license is not required to
18 fish for food fish or shellfish. All other applicable laws and rules
19 shall remain in effect.

20 **Sec. 7.** RCW 75.30.060 and 1983 1st ex.s. c 46 s 139 are each
21 amended to read as follows:

22 A person aggrieved by a decision of the department under this
23 chapter may request administrative review under the informal procedure
24 established by this section.

25 In an informal hearing before a review board, the rules of evidence
26 do not apply. A record of the proceeding shall be kept as provided by
27 chapter 34.05 RCW. After hearing the case the review board shall
28 notify in writing the director and the commission and the initiating
29 party whether the review board agrees or disagrees with the
30 department's decision and the reasons for the board's findings. Upon
31 receipt of the board's findings the director or the commission may
32 order such relief as the director or the commission deems appropriate
33 under the circumstances.

34 Nothing in this section: (1) Impairs an aggrieved person's right
35 to proceed under chapter 34.05 RCW; or (2) imposes a liability on
36 members of a review board for their actions under this section.

1 **Sec. 8.** RCW 75.50.010 and 1993 sp.s. c 2 s 45 are each amended to
2 read as follows:

3 Currently, many of the salmon stocks of Washington state are
4 critically reduced from their sustainable level. The best interests of
5 all fishing groups and the citizens as a whole are served by a stable
6 and productive salmon resource. Immediate action is needed to reverse
7 the severe decline of the resource and to insure its very survival.
8 The legislature finds a state of emergency exists and that immediate
9 action is required to restore its fishery.

10 Disagreement and strife have dominated the salmon fisheries for
11 many years. Conflicts among the various fishing interests have only
12 served to erode the resource. It is time for the state of Washington
13 to make a major commitment to increasing productivity of the resource
14 and to move forward with an effective rehabilitation and enhancement
15 program. The ((department)) commission is directed to dedicate its
16 efforts and the efforts of the department to seek resolution to the
17 many conflicts that involve the resource.

18 Success of the enhancement program can only occur if projects
19 efficiently produce salmon or restore habitat. The expectation of the
20 program is to optimize the efficient use of funding on projects that
21 will increase artificially and naturally produced salmon, restore and
22 improve habitat, or identify ways to increase the survival of salmon.
23 The full utilization of state resources and cooperative efforts with
24 interested groups are essential to the success of the program.

25 **Sec. 9.** RCW 75.50.020 and 1985 c 458 s 2 are each amended to read
26 as follows:

27 (1) The ((director)) commission shall develop long-term regional
28 policy statements regarding the salmon fishery resources ((before
29 December 1, 1985)). The ((director)) commission shall consider the
30 following in formulating and updating regional policy statements:

- 31 (a) Existing resource needs;
- 32 (b) Potential for creation of new resources;
- 33 (c) Successful existing programs, both within and outside the
34 state;
- 35 (d) Balanced utilization of natural and hatchery production;
- 36 (e) Desires of the fishing interest;
- 37 (f) Need for additional data or research;
- 38 (g) Federal court orders; and

1 (h) Salmon advisory council recommendations.

2 (2) The ((~~director~~)) commission shall review and update each policy
3 statement at least once each year.

4 **Sec. 10.** RCW 75.50.030 and 1985 c 458 s 3 are each amended to read
5 as follows:

6 (1) The ((~~director~~)) commission shall develop a detailed salmon
7 enhancement plan with proposed enhancement projects. The plan and the
8 regional policy statements shall be submitted to the secretary of the
9 senate and chief clerk of the house of representatives for legislative
10 distribution by June 30, 1986. The enhancement plan and regional
11 policy statements shall be provided by June 30, 1986, to the natural
12 resources committees of the house of representatives and the senate.
13 The ((~~director~~)) commission shall provide a maximum opportunity for the
14 public to participate in the development of the salmon enhancement
15 plan. To insure full participation by all interested parties, the
16 ((~~director~~)) commission shall solicit and consider enhancement project
17 proposals from Indian tribes, sports fishermen, commercial fishermen,
18 private aquaculturists, and other interested groups or individuals for
19 potential inclusion in the salmon enhancement plan. Joint or
20 cooperative enhancement projects shall be considered for funding.

21 (2) The following criteria shall be used by the ((~~director~~))
22 commission in formulating the project proposals:

23 (a) Compatibility with the long-term policy statement;

24 (b) Benefit/cost analysis;

25 (c) Needs of all fishing interests;

26 (d) Compatibility with regional plans, including harvest management
27 plans;

28 (e) Likely increase in resource productivity;

29 (f) Direct applicability of any research;

30 (g) Salmon advisory council recommendations;

31 (h) Compatibility with federal court orders;

32 (i) Coordination with the salmon and steelhead advisory commission
33 program;

34 (j) Economic impact to the state;

35 (k) Technical feasibility; and

36 (l) Preservation of native salmon runs.

1 (3) The ((~~director~~)) commission shall not approve projects that
2 serve as replacement funding for projects that exist prior to May 21,
3 1985, unless no other sources of funds are available.

4 (4) The ((~~director~~)) commission shall prioritize various projects
5 and establish a recommended implementation time schedule.

6 **Sec. 11.** RCW 75.50.040 and 1985 c 458 s 4 are each amended to read
7 as follows:

8 Upon approval by the legislature of funds for its implementation,
9 the ((~~director~~)) commission shall monitor the progress of projects
10 detailed in the salmon enhancement plan.

11 The ((~~director~~)) commission shall be responsible for establishing
12 criteria which shall be used to measure the success of each project in
13 the salmon enhancement plan.

14 **Sec. 12.** RCW 75.50.050 and 1987 c 505 s 72 are each amended to
15 read as follows:

16 The ((~~director~~)) commission shall report to the legislature on or
17 before October 30th of each year ((~~through 1991~~)) on the progress and
18 performance of each project. The report shall contain an analysis of
19 the successes and failures of the program to enable optimum development
20 of the program. The report shall include estimates of funding levels
21 necessary to operate the projects in future years.

22 The ((~~director~~)) commission shall submit the reports and any
23 additional recommendations to the chairs of the committees on ways and
24 means and the committees on natural resources of the senate and house
25 of representatives.

26 **Sec. 13.** RCW 75.50.070 and 1993 sp.s. c 2 s 46 are each amended to
27 read as follows:

28 The legislature finds that it is in the best interest of the salmon
29 resource of the state to encourage the development of regional
30 fisheries enhancement groups. The accomplishments of one existing
31 group, the Grays Harbor fisheries enhancement task force, have been
32 widely recognized as being exemplary. The legislature recognizes the
33 potential benefits to the state that would occur if each region of the
34 state had a similar group of dedicated citizens working to enhance the
35 salmon resource.

1 The legislature authorizes the formation of regional fisheries
2 enhancement groups. These groups shall be eligible for state financial
3 support and shall be actively supported by the commission and the
4 department. The regional groups shall be operated on a strictly
5 nonprofit basis, and shall seek to maximize the efforts of volunteer
6 and private donations to improve the salmon resource for all citizens
7 of the state.

8 **Sec. 14.** RCW 75.50.110 and 1990 c 58 s 4 are each amended to read
9 as follows:

10 A regional fisheries enhancement group advisory board is
11 established to make recommendations to the ((~~director~~)) commission.
12 The advisory board shall make recommendations regarding regional
13 enhancement group rearing project proposals and funding of those
14 proposals. The members shall be appointed by the ((~~director~~))
15 commission and consist of two commercial fishing representatives, two
16 recreational fishing representatives, and three at-large positions.
17 The advisory board membership shall include two members serving ex
18 officio to be nominated, one through the Northwest Indian fisheries
19 commission, and one through the Columbia river intertribal fish
20 commission.

21 The department may use account funds to provide agency assistance
22 to the groups. The level of account funds used by the department shall
23 be determined by the ((~~director~~)) commission after review and
24 recommendation by the regional fisheries enhancement group advisory
25 board and shall not exceed twenty percent of annual contributions to
26 the account.

27 **Sec. 15.** RCW 75.50.130 and 1993 sp.s. c 2 s 48 are each amended to
28 read as follows:

29 The ((~~director~~)) commission shall prepare a salmon recovery plan
30 for the Skagit river. The plan shall include strategies for employing
31 displaced timber workers to conduct salmon restoration and other tasks
32 identified in the plan. The plan shall incorporate the best available
33 technology in order to achieve maximum restoration of depressed salmon
34 stocks. The plan must encourage the restoration of natural spawning
35 areas and natural rearing of salmon but must not preclude the
36 development of an active hatchery program.

1 **Sec. 16.** RCW 75.52.050 and 1984 c 72 s 5 are each amended to read
2 as follows:

3 The (~~director of each department~~) commission shall establish by
4 rule:

5 (1) The procedure for entering a cooperative agreement and the
6 application forms for a permit to release fish or wildlife required by
7 RCW 75.08.295 or 77.16.150. The procedure shall indicate the
8 information required from the volunteer group as well as the process of
9 review by the department. The process of review shall include the
10 means to coordinate with other agencies and Indian tribes when
11 appropriate and to coordinate the review of any necessary hydraulic
12 permit approval applications.

13 (2) The procedure for providing within forty-five days of receipt
14 of a proposal a written response to the volunteer group indicating the
15 date by which an acceptance or rejection of the proposal can be
16 expected, the reason why the date was selected, and a written summary
17 of the process of review. The response should also include any
18 suggested modifications to the proposal which would increase its
19 likelihood of approval and the date by which such modified proposal
20 could be expected to be accepted. If the proposal is rejected, the
21 department must provide in writing the reasons for rejection. The
22 volunteer group may request the director or the director's designee to
23 review information provided in the response.

24 (3) The priority of the uses to which eggs, seed, juveniles, or
25 brood stock are put. Use by cooperative projects shall be second in
26 priority only to the needs of programs of the department or of other
27 public agencies within the territorial boundaries of the state. Sales
28 of eggs, seed, juveniles, or brood stock have a lower priority than use
29 for cooperative projects.

30 (4) The procedure for notice in writing to a volunteer group of
31 cause to revoke the agreement for the project and the procedure for
32 revocation. Revocation shall be documented in writing to the volunteer
33 group. Cause for revocation may include: (a) The unavailability of
34 adequate biological or financial resources; (b) the development of
35 unacceptable biological or resource management conflicts; or (c) a
36 violation of agreement provisions. Notice of cause to revoke for a
37 violation of agreement provisions may specify a reasonable period of
38 time within which the volunteer group must comply with any violated
39 provisions of the agreement.

1 (5) An appropriate method of distributing among volunteer groups
2 fish, bird, or animal food or other supplies available for the program.

3 NEW SECTION. **Sec. 17.** A new section is added to chapter 43.300
4 RCW to read as follows:

5 The commission shall establish, fund from existing revenues, and
6 fill a position within the department of fish and wildlife to be known
7 as the recreational fishing administrator. The duties of the
8 recreational fishing administrator are to further the development of
9 recreational fishing within the state. The administrator shall act as
10 an advisor to the commission and the director and as a bridge between
11 the director and the divisions that manage and produce fish within the
12 department. The commission shall provide the recreational
13 administrator with sufficient resources so that the position achieves
14 full effectiveness. The administrator shall form a liaison with the
15 public by reaching out to diverse recreational fishing interests in all
16 regions of the state, and shall establish regional advisors for
17 different recreational fishing interests.

18 The recreational administrator shall report annually to the
19 legislature on the progress of the program to improve recreational
20 fishing, the status of the previous year's recreational fishing
21 seasons, problems and constraints placed upon the recreational fishery,
22 conflicts between commercial fishing and recreational fishing, and
23 suggestions for recreational fishing improvements.

24 **Sec. 18.** RCW 75.08.014 and 1993 sp.s. c 2 s 21 are each amended to
25 read as follows:

26 The director shall supervise the administration and operation of
27 the department and perform the duties prescribed by law. The director
28 may appoint and employ necessary personnel. The director may delegate,
29 in writing, to department personnel the duties and powers necessary for
30 efficient operation and administration of the department.

31 Only persons having general knowledge of the fisheries and wildlife
32 resources and of the commercial and recreational fishing industry in
33 this state are eligible for appointment as director. The director
34 shall not have a financial interest in the fishing industry or a
35 directly related industry.

36 The director shall administer the budget of the department to
37 assure that the budget conforms to the goals, policies, and objectives

1 set by the fish and wildlife commission. The director has the
2 authority to negotiate and approve all agreements involving the
3 department, but the director shall consult with and consider the advice
4 of the commission on all department agreements.

5 **Sec. 19.** RCW 77.04.060 and 1993 sp.s. c 2 s 63 are each amended to
6 read as follows:

7 The commission shall hold at least one regular meeting during the
8 first two months of each calendar quarter, and special meetings when
9 called by the chair and by five members. Five members constitute a
10 quorum for the transaction of business.

11 The commission at a meeting in each odd-numbered year shall elect
12 one of its members as chairman and another member as vice chairman,
13 each of whom shall serve for a term of two years or until a successor
14 is elected and qualified.

15 The commission shall:

16 (1) Schedule meetings in each region on a rotating basis so that
17 meetings are held in every region on a regular continuing basis;

18 (2) Schedule day and evening meetings in every region;

19 (3) Accept public testimony at every meeting;

20 (4) Use regional office staff for meetings and presentations; and

21 (5) Limit department staff attending meetings to reduce expenses.

22 Members of the commission shall be compensated in accordance with
23 RCW 43.03.250, however, commission members and staff shall share
24 transportation and lodging whenever possible. In addition, members are
25 allowed their travel expenses incurred while absent from their usual
26 places of residence in accordance with RCW 43.03.050 and 43.03.060.

27 NEW SECTION. **Sec. 20.** By December 1, 1995, the fish and wildlife
28 commission shall submit to the committees on natural resources of the
29 house of representatives and the senate a report identifying other
30 statutory changes necessary for implementation of the commission's
31 recommendations regarding its responsibilities in the department of
32 fish and wildlife.

33 NEW SECTION. **Sec. 21.** Sections 2 through 19 of this act shall
34 take effect July 1, 1996.

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