
Environment & Energy Committee

HB 1869

Brief Description: Encouraging salmon recovery through voluntary stewardship.

Sponsors: Representatives Klicker, Dent, Chase and Graham.

Brief Summary of Bill

- Authorizes counties and cities to include an optional salmon recovery element within comprehensive plans adopted under the Growth Management Act (GMA).
- Requires a county or city that has included a salmon recovery element in its comprehensive plan to adopt a salmon recovery work plan that will result in an improvement in anadromous fish habitat.
- Establishes a process for the review and approval of salmon recovery work plans.
- Establishes an alternative compliance pathway for counties and cities in which certain contingencies arise.
- Provides that a county or city may not be found to be in non-compliance with GMA requirements related to protections for critical areas if the Department of Fish and Wildlife determines that the county or city has not received adequate funding to implement a salmon recovery program.

Hearing Date: 1/28/22

Staff: Robert Hatfield (786-7117).

Background:

Growth Management Act.

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.

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 Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities. The GMA also establishes a significantly wider array of planning duties for 28 counties, and the cities within those counties, that are obligated to satisfy all planning requirements of the GMA. These jurisdictions are sometimes referred to as "fully planning" under the GMA.

The GMA directs fully planning jurisdictions to adopt internally consistent comprehensive land use plans. Comprehensive plans are implemented through locally adopted development regulations, and both the plans and the local regulations are subject to review and revision requirements prescribed in the GMA. Comprehensive plans must contain certain required elements, including a transportation element, a land use element, and a capital facilities plan element, among others. There are also certain optional elements that a comprehensive plan may address, such as conservation and recreation.

All jurisdictions are required by the GMA to designate natural resource lands and to designate and protect critical areas. These protection requirements obligate local governments to adopt development regulations, also known as critical areas ordinances (CAOs), that meet specified criteria. As defined by statute, critical areas include: wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.

Growth Management Act—Voluntary Stewardship Program.

The Voluntary Stewardship Program (VSP) was created in 2011 and allows participating counties to develop local work plans that use voluntary and incentive-based tools, as an alternative to regulation, to protect critical areas and agricultural lands. Counties had to opt in to the VSP by early 2012, and 27 counties have chosen to participate in VSP.

Counties participating in the VSP create a work plan that is approved by the Washington State Conservation Commission (Conservation Commission) and then implement the plan by recruiting local landowners to participate in incentive-based stewardship activities. Counties report their progress to the Conservation Commission. The Conservation Commission is required to determine every two years which watersheds in participating counties received adequate funding to implement the VSP.

If the Conservation Commission determines that a watershed within a participating county has not received adequate funding to implement the VSP, the county must take one of four specified actions:

- develop, adopt, and implement a work plan in the watershed that protects critical areas used for agricultural activities;
- adopt development regulations that have previously been adopted by another local government for the purpose of protecting critical areas used for agricultural activities;
- adopt development regulations certified by the Department of Commerce as protective of critical areas in areas used for agricultural activities; or
- review, and if necessary, update development regulations adopted under the GMA to

protect critical areas as they relate to agricultural activities.

Washington State Conservation Commission.

The Conservation Commission assists and guides Washington's 47 conservation districts, which are political subdivisions of the state, as they work with local communities to conserve renewable natural resources.

Summary of Bill:

Growth Management Act—Salmon Recovery Work Plans.

Salmon recovery is added as an optional element that counties and cities may address in their comprehensive plans adopted under the Growth Management Act (GMA).

If a city or county chooses to adopt an optional salmon recovery element within its comprehensive plan, the salmon recovery element must comply with requirements set forth below.

As part of an optional salmon recovery element, a county or city must develop a work plan that is designed to result in an improvement in anadromous fish habitat. The work plan must include goals and benchmarks for the protection and enhancement of the natural features within the county or city that contribute to anadromous fish habitat on a watershed basis.

In developing and implementing the salmon recovery work plan, the county or city must take certain actions, including:

- review and incorporate applicable water quality, watershed management, and species recovery data and plans, including the applicable elements of salmon recovery plans adopted pursuant to the Endangered Species Act;
- seek input from tribes, agencies, and stakeholders; and
- create measurable benchmarks that, within 10 years after the receipt of funding, are designed to result in the protection and enhancement of the functions and values of the natural features that contribute to anadromous fish habitat on a watershed basis through voluntary, incentive-based measures.

The county or city must submit the work plan to the Department of Fish and Wildlife (WDFW) for approval.

Not later than five years after the receipt of funding for a participating county or city, and every five years thereafter, the county or city must report to the WDFW on whether it has met the work plan's protection and enhancement goals and benchmarks. If the county or city determines the protection and enhancement goals and benchmarks have been met, and the WDFW concurs, the county or city must continue to implement the work plan. If the county or city determines the protection and enhancement goals and benchmarks have not been met, it must submit to the WDFW an adaptive management plan to achieve the goals and benchmarks that were not met. The county or city must implement the actions identified in the adaptive management plan when

funding is provided.

Salmon Recovery Work Plans—Technical Panel.

When the WDFW receives a salmon recovery work plan, the WDFW must submit the work plan to the Salmon Recovery Technical Panel (Technical Panel) for review. The Technical Panel consists of the directors or director-designees of the WDFW, the Department of Ecology, the Washington State Conservation Commission, and the Recreation and Conservation Office.

The Technical Panel must review the work plan and report to the WDFW within 90 days after the WDFW receives the work plan. The Technical Panel must assess whether, on a more probable than not basis, at the end of 10 years after receipt of funding, the work plan, in conjunction with other existing plans and regulations, will protect and enhance functions and values of the natural features within the county or city that contribute to anadromous fish habitat on a watershed basis.

If the Technical Panel determines the proposed work plan will protect and enhance anadromous fish habitat, it must recommend approval of the work plan and the WDFW must approve the work plan.

If the Technical Panel determines the proposed work plan will not protect and enhance anadromous fish habitat it must identify the reasons for its determination, and the WDFW must advise the county or city of the reasons for disapproval. In such an instance, the county or city may modify and resubmit its work plan for review and approval.

If the WDFW does not approve a work plan within two years and nine months after the county or city receives funding to implement the work plan, the WDFW must submit the work plan to the statewide Salmon Recovery Advisory Committee (Advisory Committee) for resolution. If the Advisory Committee recommends approval, the WDFW must approve the work plan.

If the WDFW does not approve a work plan within three years after receipt of funding, the county or city is subject to the alternate compliance pathway described below.

Salmon Recovery Work Plans—Consultation with Advisory Committee.

If the WDFW, following receipt of a report from a city or county, concludes that the work plan goals and benchmarks have not been met, the WDFW must consult with the Advisory Committee for a recommendation on how to proceed. If the WDFW, acting upon recommendation from the Advisory Committee, determines that the county or city is likely to meet the goals and benchmarks with an additional six months, the WDFW must grant an extension of time.

If the WDFW determines that the county or city is unlikely to meet the goals and benchmarks within six months, or if the county or city fails to meet its goals and benchmarks within the six-month time extension, the county or city is subject to the alternate compliance pathway described below.

Salmon Recovery Work Plans—Alternate Compliance Pathway.

A city or county is subject to an alternate compliance pathway if any of the following contingencies occur:

- if a salmon recovery work plan is not approved by the WDFW;
- if the work plan's goals and benchmarks have not been met;
- if the WDFW determines that the inadequate funding has been made available to implement the work plan; or
- if the adaptive management plan is not approved by the WDFW.

Within 18 months of the occurrence of any of the above contingencies, a county or city must do one of the following:

- develop a work plan approved by the WDFW that protects and enhances anadromous fish habitat;
- adopt development regulations certified by the WDFW as protective of anadromous fish habitat; or
- review and, if necessary, revise development regulations adopted under the GMA to protect anadromous fish habitat in the county or city.

A county or city may not be found to be in non-compliance with GMA requirements to protect critical areas if the WDFW determines that the county or city has not received adequate funding to implement a salmon recovery program.

Determination of Adequacy of Funding.

By July 31, 2025, and every two years thereafter, the WDFW must determine which counties and cities received adequate funding to establish and implement the salmon recovery program. If the WDFW determines that the county or city has not received adequate funding, the county or city is subject to the alternate compliance pathway described above.

By August 31, 2025, and every two years thereafter, the WDFW must report to the Legislature and each participating county and city on progress made toward improvements in anadromous fish habitat made by participating counties and cities that have received adequate funding to establish and implement the program.

Statewide Salmon Recovery Advisory Committee—Composition and Responsibilities.

The WDFW must appoint an Advisory Committee consisting of two persons representing counties, two persons representing cities, and two persons representing community interests. The Advisory Committee, in conjunction with the Governor's Office, must also invite participation by two representatives of tribal governments.

Members of the Advisory Committee serve two-year terms, except that for the first year one representative from each of the sectors must be appointed to the Advisory Committee for a term of one year. Members may be reappointed by the WDFW for additional two-year terms. The director of the WDFW serves as a nonvoting chair of the Advisory Committee.

Members of the Advisory Committee serve without compensation.

The role of the Advisory Committee is to advise the WDFW in matters related to the voluntary salmon recovery program, including:

- evaluation and resolution of work plans;
- recommendations regarding extensions of time by which counties and cities must meet the goals and benchmarks of work plans; and
- consultation with the WDFW regarding progress toward improvements in anadromous fish habitat by participating counties and cities that have received adequate funding to implement the program.

Review by the Growth Management Hearings Board.

The Growth Management Hearings Board has jurisdiction to hear petitions alleging that a WDFW approval of a salmon recovery work plan, or a WDFW certification of development regulations, is erroneous.

Appropriation: None.

Fiscal Note: Requested on January 17, 2022.

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