



January 28, 2018

The Puget Sound Partnership's Legislative Update highlights issues related to our region's work to protect and recover Puget Sound.

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- The 90-day 2018 regular Legislative Session runs from January 8 to March 8, 2018.
 - Puget Sound Legislative Updates are posted on the Partnership's [website](#).
 - View the Puget Sound Partnership's [2018 Legislative Agenda](#).
 - Find up-to-date legislative information [online](#).
 - Watch or listen to hearings and work sessions [online](#).
 - Connect with the Puget Sound Partnership for breaking news and other events affecting Puget Sound on Twitter [@PSPartnership](#) and Facebook [@PugetSoundPartnership](#).

If you have questions or concerns about the legislative priorities for the Puget Sound Partnership, please contact: [Jeff Parsons](#), Legislative Policy Director, 360.999.3803.

Cutoff calendar for 2018 session established

Among the Legislature's first duties was adopting a **session cutoff calendar**, which established the following deadlines:

- **February 2.** Last day for policy committees to pass bills in their house of origin.
- **February 6.** Last day for fiscal committees to pass bills in their house of origin.
- **February 14.** Last day for each house to pass bills out of their house of origin.
- **February 23.** Last day for policy committees to pass bills originating in the opposite house.
- **February 26.** Last day for fiscal committees to pass bills originating in the opposite house.
- **March 2.** Last day for each house to pass bills originating in the opposite house.

After 5 p.m. on March 2, the only items that may continue to be considered by the Legislature are initiatives and alternatives to initiatives; budgets and matters necessary to implement budgets; matters that affect state revenue; measures pertaining to amendments; matters of differences between the two houses; and matters incident to the interim and to the closing of the session.

Legislature passes Hirst compromise and Capital Budget

The biggest news of the legislation session so far is passage of a Capital Budget January 18. The Legislature was unable to adopt a Capital Budget in 2017, so passage of a Capital Budget became the highest priority for the Puget Sound Partnership for the 2018 session.

The Legislature's inability to pass a Capital Budget last year was due to the insistence by Republican legislators on passage of a so-called "Hirst fix" before a Capital Budget vote would be considered. The Hirst fix refers to legislation intended to solve problems resulting from the Hirst decision, a State Supreme Court ruling that has been preventing local governments from issuing building permits for dwellings that rely on wells for water where the local government cannot certify the legal availability of that water.

Before passing the Capital Budget bill last week, both houses of the Legislature passed Engrossed Substitute **SB 6091, a compromise bill addressing the Hirst decision**. The bill is detailed and complex—a summary is included in the [House Bill Report](#), available on the state’s Legislative Information website, leg.wa.gov. In addition, the Washington Department of Ecology [offers information](#) on their website about the legislation and how it will be implemented. One important feature of the bill is an expression of the Legislature’s intent to appropriate \$300 million for projects to achieve the goals of the act until June 30, 2033.

The version of the **Capital Budget that passed (Second Substitute SB 6090)** includes appropriations for the following priorities of the Partnership:

- Stormwater Financial Assistance Program: **\$55.1 million**
- Puget Sound Acquisition and restoration Program: **\$40 million**
- Estuary and Salmon Restoration Program: **\$8 million**
- Salmon Recovery Funding Board: **\$19.7 million**, in state funds; **\$50 million**, in federal funds
- Fish Passage Barrier Removal Board: **\$19.75 million**
- Family Forest Fish Passage Program: **\$5 million**
- Washington Wildlife and Recreation Program: **\$80 million**

In addition, the bill includes \$20 million for the Department of Ecology to fund watershed restoration and enhancement projects as part of the Hirst compromise.

Senate reviews gubernatorial appointments

By statute, the Puget Sound Partnership is led by a Leadership Council composed of seven members appointed by the Governor, with the advice and consent of the Senate. In connection with this advice and consent role, the Senate Energy, Environment and Technology Committee held a hearing January 9 on the appointments of Jay Manning, Deborah Jensen, and Russ Hepfer to the Leadership Council. Last year, the same committee conducted a public hearing on Dennis McLaren’s appointment. The Committee approved resolutions with Do Pass recommendations for the confirmation of all four Leadership Council members.

The resolutions for Russ Hepfer, Deborah Jensen, and Jay Manning have been placed on the Senate Conformation Calendar and are awaiting action by the full Senate. The resolution for Dennis McLerran is now in the Senate Rules Committee, awaiting scheduling for action by the full Senate.

House considers legislation to protect fish habitat

Any construction project that would use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state requires a Hydraulic Project Approval (HPA) issued by the Washington Department of Fish and Wildlife (WDFW) to ensure the proper protection of fish life. Current law states that the WDFW may levy a civil penalty of up to \$100 per day for violations of a permit or may seek criminal prosecution. But WDFW has determined that the size of the fine is an ineffective deterrent to violations, and criminal convictions are difficult to obtain.

House Bill 2337 seeks a remedy to this situation. Introduced by Rep. Fitzgibbon, HB 2337 authorizes WDFW to issue a stop-work order if there is a violation of the Hydraulic Code or of WDFW’s rules, if there is a deviation from the HPA, or if immediate action is necessary to stop or avoid material damage to fish life. The stop-work order may require that the person stop all work connected with the violation until corrective action is taken.

The bill also authorizes WDFW, after first seeking voluntary compliance, to assess a penalty of up to \$10,000 for every violation of the Hydraulic Code or rules implementing the Code that occurs at or below the ordinary high-water line.

The House Agriculture & Natural Resources Committee conducted a public hearing on HB 2337 Jan. 11 and considered it again in executive session. The Partnership testified in support. The committee has taken no further action on the bill.

Budget proposal includes funding for steelhead study

Juvenile Puget Sound steelhead experience high mortality rates, and the causes are not well understood. The Partnership supports a \$790,000 request in the Governor's 2018 Supplemental Operating Budget ([HB 2299](#) and [SB 6032](#)) for WDFW to complete the third and final phase of research that tests management strategies and develops a plan to reduce the mortality rates and improve survival.

Proposed legislation addresses finfish aquaculture

In the aftermath of the escape of more than 300,000 Atlantic salmon from a collapsed net pen near Cypress Island last year, the Governor ordered a moratorium on any new net pens permits until the findings of an investigation of the incident can be completed.

The Legislature is considering legislation to phase out or immediately ban Atlantic salmon net pens in Washington state. The Senate Agriculture, Water, Natural Resources, and Parks Committee conducted a public hearing on Jan. 9 to consider [Senate Bill 6086](#), sponsored by Sen. Ranker and others. The bill prohibits the Department of Natural Resources (DNR) from entering into a new, or renewing or extending an existing, lease or use authorization that involves marine finfish aquaculture of Atlantic salmon or other nonnative finfish. It also prohibits the WDFW and Ecology from authorizing or permitting activities or operations involving marine finfish aquaculture of Atlantic salmon or other nonnative finfish after the expiration date for an existing aquatic lands lease. The Committee passed a proposed substitute version of the bill, which is now in the Senate Ways & Means Committee for fiscal review. The Committee conducted a public hearing on the bill January 25.

On January 18, the House Agriculture & Natural Resources Committee held a hearing on two more bills that address Atlantic salmon net pens. [House Bill 2260](#) would prohibit the spawning, incubation, and cultivation of Atlantic salmon in marine waters regulated by the state. [House Bill 2418](#) would reduce the impacts of nonnative finfish aquaculture by delaying construction of new nonnative finfish aquaculture facilities until thorough study, including structural analysis of existing facilities, is complete. Both bills remain in the House Agriculture & Natural Resources Committee.

House considers bill to remove fish passage barriers

[House Bill 2902](#), sponsored by Rep. Wilcox, appropriates \$50 million to WDFW for fish passage barrier removal projects. Among other stipulations, the bill requires coordination with the Puget Sound Partnership to capture priorities embodied in the Puget Sound Action Agenda.

The bill also requires the [Fish Barrier Removal Board](#) to make reports to the Legislature by December 1 of each year on progress toward the goal of quickly, efficiently, and expansively opening fish habitat.

The bill received a public hearing in the House Agriculture & Natural Resources Committee on January 25. The Partnership testified in support of the goal of this bill. However, the funding for the bill is not included in the Governor's budget and, therefore, the Partnership cannot take an official position on the bill.

Orca protection and recovery legislation considered

To stop further declines in the Southern Resident orca population, the Partnership supports measures to address the three primary factors threatening this population: prey availability, legacy and on-going toxic contaminants, and disturbance from noise and vessel traffic. These factors are addressed in the Governor's 2018 Supplemental and Capital Budgets as follows:

- \$3.1 million in the Governor's 2018 Supplemental Operating Budget (HB 2299 and SB 6032) for the WDFW to take action to address the limiting factors for Southern Resident orca recovery, including increasing the production of Chinook salmon at hatcheries, improving habitat for Chinook salmon recovery, reducing sea lion and harbor seal predation on Chinook salmon, increasing enforcement of vessel regulations, preparing oil spill plans to protect orca whales, and conducting education and outreach. Funding is also provided for WDFW to support the Southern Resident Orca Task Force expected to be created by the Governor.
- \$5.7 million in the Governor's 2018 Supplemental Capital Budget (**HB 2395** and SB 6095) for WDFW to support Southern Resident orca recovery, including \$4.9 million for the design and construction phases for rebuilding the Samish River intake at Samish Hatchery to comply with current fish passage and fish screening requirements; and \$825,000 to replace fish screens, well development at Samish Hatchery, and pipeline discharge extension at Ringold Hatchery.

House Bill 2417, sponsored by Rep. Blake, appropriates \$1.55 million to WDFW for hatcheries to increase production of Chinook and other salmon species by 10 million and establishes an Orca Recovery Task Force. The House Agriculture and Natural Resources Committee conducted a public meeting on the bill January 23 and approved a Do Pass recommendation. The bill has been referred to the House Appropriations Committee.

Senate Bill 6268, sponsored by Sen. Ranker, creates the Orca Protection Act, which would accomplish the following:

- Establishes minimum requirements for marine-based education and enforcement patrols by WDFW during peak orca viewing season.
- Extends existing restrictions on vessels approaching within 200 yards of an orca to also include aircraft and drones.
- Prohibits a person from exceeding a speed of seven knots within 400 yards of a Southern Resident orca.
- Requires a study on orca impacts caused by human-generated marine noise, and a meeting on coordination of recovery strategies between Washington state and British Columbia.

The Senate Agriculture, Water, Natural Resources, and Parks Committee conducted a public hearing on **SB 6268** January 23; the Partnership testified in support. The bill is scheduled for executive session Feb. 1.

Partnership testifies in support of oil transportation safety bill

SB 6269, sponsored by Sen. Ranker at the request of Ecology, would strengthen oil transportation safety in the Salish Sea through a series of actions, as summarized in the [Senate Bill Report](#), available on the legislative information website. The Senate Committee on Energy, Environment & Technology conducted a public meeting on the bill Jan. 25. The Partnership testified in support. Ecology offers a [fact sheet on SB 6269](#) on their website.

WDFW NEWS RELEASE

Washington Department of Fish and Wildlife
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<http://wdfw.wa.gov/>

Washington Department of Natural Resources
Washington Department of Ecology
Washington Department of Fish and Wildlife

January 30, 2018

State investigation finds Cooke's negligence was primary cause of Atlantic salmon net pen collapse

OLYMPIA – State investigators have determined that an excessive buildup of mussels and other marine organisms on nets – caused by Cooke Aquaculture's failure to properly clean them – led to the August 19 collapse of the company's net pen at Cypress Island.

An investigative report – authored by the departments of Natural Resources (DNR), Ecology, and Fish and Wildlife (WDFW) – found that 110 tons of mussels and plants had accumulated on the nets before the incident. The [report](#) was released today at a news conference in Olympia.

The investigation determined that tidal currents pushing against the tremendous mass of organisms on the nets overwhelmed the pen's mooring system and crushed the pen.

Extensive corrosion of the net pen structure also contributed to the collapse.

In addition, the agencies identified shortcomings in engineering practices that likely contributed to the failure.

Properly designed and maintained net pens would have withstood the tidal currents of August 19.

"The collapse was not the result of natural causes," said **Hilary Franz, Commissioner of Public Lands**. "Cooke's disregard caused this disaster and recklessly put our state's aquatic ecosystem at risk."

"The results of our investigative report clearly show a significant violation of Washington's water quality laws," said **Ecology Director Maia Bellon**. "Cooke Aquaculture could have prevented this failure."

"Cooke made this situation even more difficult by under-reporting the number of fish that escaped during the net-pen collapse, and over-reporting the number it recovered afterward," said **Amy Windrope, WDFW's north Puget Sound regional director**.

Growth of mussels and other marine organisms on nets – called "biofouling" – is documented in state agency [videos](#) that show a "rain" of mussels falling off nets as debris from the collapse was removed.

The severe biofouling produced 110 tons of material – an average of 11 tons per net.

Cooke's Failure to Act

Prior to the collapse, Cooke was aware of both the excessive biofouling and the poor condition of the facility.

The report details how Cooke didn't follow its net pen cleaning schedule when broken net washers were not repaired or replaced. This allowed mussels to accumulate on the nets, which increased the drag from currents and added pressure to the structure.

Cooke also failed to take necessary precautions after the net pens were moved out of position in July when strong currents broke ten mooring points.

Cooke documents show that after the July incident, the company had serious concerns about the facility. An internal company email stated, "We almost lost the farm."

Nevertheless, after the July incident, Cooke considered, but did not:

- Replace the biofouled nets,
- Begin their salmon harvest early, or
- Increase monitoring of the net pens and have a tug on standby when strong currents were again expected on August 19.

The report notes that state agencies did not investigate the July incident because they received incomplete and misleading information from Cooke.

More Salmon Escaped Than Cooke Reported

The report also found that Cooke misrepresented the number of fish it harvested when the pen collapsed. According to the report:

- There were 305,000 fish in the net pen prior to failure.
- Cooke reported harvesting/extracting 145,000 fish from the collapsed net pen.
- The investigation concluded that Cooke could only have extracted between 42,000 and 62,000 fish.
- Therefore, between 243,000 and 263,000 fish actually escaped. Previous estimates, based on Cooke's reports, put the number of escaped fish at 160,000.
- Of the escaped fish, 57,000 have been caught.
- Between 186,000 and 206,000 Atlantic salmon remain unaccounted for.

The report concludes that monitoring through the winter and next fall's salmon run season will be critical to knowing if any escaped Atlantic salmon remain in Washington's waters and if they are reproducing.

Commissioner Franz is currently reviewing the report and will make an announcement about the future of the Cypress Island facility in the coming days.

In December, DNR [terminated Cooke's lease](#) of state aquatic lands in Port Angeles, citing a failure to maintain the facility in a safe condition.

Ecology intends to take enforcement action against Cooke Aquaculture for violating Washington's water quality laws.

This multi-agency report included information collected during and after the incident, interviews with Cooke staff, and an engineering review of the failure.

More documents and information is available at www.dnr.wa.gov/atlanticsalmon.

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