

## HB 2193, to create a regulatory accelerator for salmon recovery projects

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### Key Findings

1. **Progress on recovering salmon populations across Washington state is very slow or, in some places, nonexistent.**
2. **Permits and other regulatory barriers are often cited by local salmon recovery project managers as creating roadblocks to finishing projects efficiently and on time.**
3. **Modeled on “regulatory sandboxes” found in more than a dozen other states, a salmon recovery accelerator would allow project managers to request specific regulatory relief from state agencies.**
4. **The accelerator office works with the agencies to either provide relief, reject regulatory changes, or find an alternative approach to mitigating the regulatory barrier.**
5. **Grants of regulatory relief are temporary and may be rescinded if necessary.**
6. **Empowering salmon recovery project managers and regulatory agencies to accelerate projects would help ensure projects are completed quickly and allow the state and local watersheds to respond to emergencies where delay would be damaging.**
7. **Several other states already have similar programs, allowing Washington to learn from their experience.**

### Introduction

Across Washington state, salmon populations continue to struggle, with few watersheds making progress toward recovery.

The State of Salmon in Watersheds report from Governor Inslee’s Salmon Recovery Office notes, “No salmon species have been removed from the federal Endangered Species Act list in Washington and most of the species on the list are in crisis or not keeping pace with recovery goals.”<sup>1</sup>

The problems are not limited to just one part of the state. In Puget Sound, between 2004 and 2019, there were declines in the number of spawning salmon in 16 of the 22 Chinook populations. As a result, the state badly missed its 2020 goal for Puget Sound to begin to show improvements in wild Chinook populations in each of the five biogeographical regions.<sup>2</sup>

The simple truth is that progress on salmon recovery is too slow. That is creating tension between groups who have turned to fighting for their share of a shrinking fish population.

Washington state needs to get salmon recovery back on track.<sup>3</sup> Central to that effort is to put more control in the hands of local salmon recovery organizations. Ask those on the ground about the problems they face and they will invariably mention state permitting and other regulatory roadblocks. Helping reduce or eliminate those roadblocks is an important step in helping complete habitat restoration for salmon quickly and effectively.

HB 2193 would use the model of a “regulatory sandbox,” used by more than a dozen other states, to identify unnecessary regulatory barriers and empower state agencies

1 “State of Salmon in Watersheds – Executive Summary,” Governor’s Salmon Recovery Office, at <https://stateofsalmon.wa.gov/executive-summary/> (Accessed August 9, 2023).

2 “Leadership Council Resolution 2011-14 Adopting a 2020 ecosystem recovery target for Chinook salmon,” Puget Sound Partnership, June 18, 2011, at <https://pspwa.app.box.com/s/esy5dvqxv4roopabp9uevds1q47ea0fg>.

3 “Getting back on track with salmon recovery in Washington state,” Todd Myers, Washington Policy Center, September 2023, <https://www.washingtonpolicy.org/library/doclib/Myers-Salmon-Recovery.pdf>.

to temporarily waive or mitigate them.<sup>4</sup> This new tool would allow project managers and regulators to work together to identify and solve problems in real time, rather than having to wait years for legislative action.

Salmon recovery activists and agencies have studied the problem of excessive permitting and regulation many times. What is needed now is a tool to act quickly and accelerate salmon recovery. HB 2193 would do that.

## A “Regulatory Sandbox” for salmon

The policy in HB 2193, known as the “New Environmental Regulation Accelerator” or New ERA bill, borrows from an approach known as a “regulatory sandbox.” The idea is to allow businesses or other organizations to identify regulatory barriers that make it difficult to innovate or achieve a policy goal.

Rees Empey of Libertas, one of the nation’s leading experts on regulatory sandboxes, testified that this model enables “innovators–entrepreneurs both big and small, old and new–to work with regulators and the legislature in trialing new products, services, and business models while state rules and regulations inapplicable to their ideas are temporarily waived.” The waivers are temporary and if there are problems, the regulatory agency can rescind the waiver.

Although the concept is new in Washington state, the approach has been used in several other places. “This concept isn’t new, beginning in 2016 when the United Kingdom launched the world’s first sandbox and targeted financial technologies or fintech,” notes Empey. “Stateside, in 2018, Arizona passed the United States’ first sandbox, which also targeted fintech and something similar began to happen. States such as North Carolina, Hawaii, Connecticut, Vermont, Utah, Kentucky, and several more began implementing sandboxes of their own while expanding the concept’s application to other industries.”

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4 “AN ACT Relating to the new environmental restoration accelerator for salmon recovery; adding a new section to chapter 43.31 RCW; and adding a new section to chapter 44.28 RCW.,” Washington State Legislature, introduced January 5, 2024, at <https://lawfilesexternal.wa.gov/biennium/2023-24/Pdf/Bills/House%20Bills/2193.pdf?q=20240121132553>.

Although Washington would be the first to apply a regulatory sandbox to salmon recovery, Connecticut created the “Innovative Energy Solutions” program to encourage innovation in the energy sector to help reduce CO2 emissions.<sup>5</sup> Washington can use the experience of those other states when implementing the accelerator to ensure it is effective while avoiding potential pitfalls.

## HB 2193: The New ERA Bill

The legislation itself is straightforward. It would create an office to implement the accelerator and provide the authority to regulatory agencies to waive regulations. It would establish “An environmental restoration accelerator,” designed to “provide regulatory flexibility for salmon recovery projects.” The bill would make any entity receiving funding for the “primary purpose of salmon recovery from” the Climate Commitment Act (CCA) funds eligible to participate in the accelerator.

The staff of the accelerator office would be instructed to help eligible projects “with identifying any regulatory barriers to successfully and efficiently implementing the project or program for which the entity received funding.”

Washington state spends hundreds of millions of dollars each biennium on salmon recovery and that amount is likely to increase with the funding provided in the CCA. The accelerator would help ensure those funds effectively achieve the goal of providing habitat restoration and increasing salmon populations. If the state’s own regulations are contradictory to the goals of the funding, accelerator staff would help find ways to mitigate or eliminate that contradiction.

When managers of a salmon recovery project request regulatory relief, officials at the relevant agency, such as the Department of Ecology or the Department of Fish and Wildlife (WDFW), would have three options. They could provide the relief requested, temporarily waiving the regulation. They could simply reject the request, citing the need for the regulation

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5 “Innovative Energy Solutions Program,” Connecticut Department of Energy and Environmental Protection, at <https://portal.ct.gov/pura/electric/office-of-technical-and-regulatory-analysis/clean-energy-programs/innovative-energy-solutions-program>.

in question. Finally, they could find other ways to mitigate the impact of the regulation by providing non-regulatory assistance. In each instance, the regulatory agency has control. There is no requirement to provide relief and even if a regulation is waived, the agency can rescind that waiver.

If a regulation is waived, other salmon recovery project managers would be notified so they could take advantage of a similar reduction in regulations if appropriate.

The legislation also would require accelerator staff to provide annual reports regarding the number and type of entities asking for relief, the details of the waiver requests and the outcomes, and recommendations for amending state laws and providing permanent regulatory relief. The list of requests provides useful research for legislators and agency staff to focus future efforts related to streamlining regulatory barriers. Although the law would not apply to federal law, data regarding challenges with those regulations could be provided to federal representatives to address.

Finally, the bill would require the Joint Legislative Audit Review Committee (JLARC) to review the effectiveness of the law and compare the success of projects using the accelerator to those that did not.

There are two changes that have been suggested to the original text, both of which are reasonable.

The initial bill located the accelerator in the Department of Commerce. Some have suggested that it is better located elsewhere, such as the Recreation and Conservation Office, which oversees many salmon-recovery grants, or the Office for Regulatory Innovation and Assistance. Either of those would be suitable, given their expertise in salmon recovery and navigating regulatory barriers.

HB 2913 also focused initially on funds from the Climate Commitment Act. There are many other salmon recovery grant programs and many salmon recovery experts suggested the coverage expand to those programs, including the Puget Sound Acquisition and Restoration fund, the Salmon Recovery Funding Board, Floodplains by Design, and others. This makes sense and the accelerator should include those as well to

provide the best opportunity to accelerate all habitat restoration efforts.

## **An important tool to save salmon from extinction**

The New ERA bill would provide the necessary authority to address the problems many salmon recovery project managers have been complaining about for years. There have been numerous studies examining the barriers to finishing salmon recovery projects quickly. Yet another study would not take the key step to address the real-time needs on the ground or address emergencies. We have experience with agencies using their authority to address emergencies in recent years and understand that it can be a useful and appropriate tool.

For example, when the Lummi Tribe identified an emergency need for funding habitat protection on the Nooksack river, the Puget Sound Partnership (PSP) and the Puget Sound Salmon Recovery Council offered several ways to quickly provide the funding. The PSP used the authority it had to find a way to provide the support to deal with the emergency. Without that flexibility, the response to the emergency would have been to tell tribal officials the state would study the issue and get back to them in two years for the next round of grants.

The salmon recovery accelerator takes that spirit of responding quickly to real-world problems by providing authority for regulators to act immediately.

HB 2193 would also complement the existing WDFW permit streamlining pilot program. That effort removes requirements or streamlines some permits for habitat restoration. The salmon recovery accelerator would apply to regulations not covered in the pilot program and would provide an incentive for organizations to highlight potential barriers by offering potential relief.

Additionally, the pilot program ends in 2025 and the information gathered by both the accelerator and the pilot program can be used to create a broader picture of the challenges faced by those trying to restore salmon habitat.

The combination of providing real-time information and a tool to address the immediate needs of salmon recovery project managers makes the accelerator a useful tool. It would

ensure the funding provided to save salmon is spent effectively and yields increases in salmon populations that have eluded the state for two decades.

### **Conclusion: It's time for action**

A phrase commonly used by frustrated salmon recovery activists is that it is time for “bold action” to increase salmon populations so they can provide food for orca, provide economic benefits to tribes and other fishers, comply with treaty obligations, and keep their place as an iconic part of the culture and lifestyle of the Northwest.

Providing state agencies with the authority to temporarily waive excessive regulations, as many other states have already done, is important but not particularly bold. Agencies like the Puget Sound Partnership have already found ways to use its authority to address emergencies and other needs as they arise. Extending that same principle to permit and other barriers is simply commonsense. If we can't provide this straightforward authority to act, how can we expect to take other actions that are truly bold?

Adoption of HB 2193 would be a step in the right direction for salmon populations and would demonstrate that the legislature values salmon recovery over bureaucratic inertia.

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