



Washington State Legislature

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Hatchery Spending & Project Task Force

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November 22, 2019

Dear Secretary of the Senate and Chief Clerk of the House of Representatives:

As the co-chairs of the Joint Legislative Hatchery Spending and Project Task Force, we are pleased to notify you that the Task Force has approved the attached report to the Legislature due December 1, 2019.

Sincerely,

Handwritten signature of Shelly Short in cursive.

Senator Shelly Short, Co-Chair
7th Legislative District

Handwritten signature of Brian Blake in cursive.

Representative Brian Blake, Co-Chair
19th Legislative District

Cc: Members of the Joint Legislative Hatchery Spending and Project Task Force
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JOINT LEGISLATIVE HATCHERY
SPENDING & PROJECT TASK FORCE
FINAL REPORT

November 22, 2019

MEMBERS

Representative Brian Blake, Co-Chair
Senator Shelly Short, Co-Chair
Representative Debra Lekanoff
Senator Marko Liias
Representative Drew Stokesbary
Senator Kevin Van De Wege
Senator Keith Wagoner
Representative Jim Walsh

Table of Contents

Executive Summary	3
Task Force Proviso	3
Task Force Membership	4
Background.....	4
The Hatchery Scientific Review Group (HSRG)	4
Hatchery Regulations	5
Summary of Meetings	6
Initial meeting, September 26, 2019	6
Second meeting, October 23, 2019	6
Summary of Public Testimony	7
Recommendations.....	7
Appendix	
Minority Report	8

Executive Summary

In 2019, the Legislature created the Hatchery Spending and Project Task Force (Task Force) as part of the 2019-21 Operating Budget, Chapter 415, Laws of 2019, Section 307 (3)(a). The Legislature directed the Task Force to review the purpose and activities of the Hatchery Scientific Review Group (HSRG) and develop recommendations for the Legislature to establish a replacement group or entity that will analyze state spending and projects related to hatcheries that are proposed in state operating and capital budgets.

The Task Force met during the 2019 interim to review hatchery reform and the hatchery spending review process. Presentations on the HSRG, co-management of hatchery operations, and the review of hatcheries under the Endangered Species Act (ESA) were made to the Task Force by the Washington Department of Fish and Wildlife (WDFW), the Northwest Indian Fisheries Commission, the Upper Columbia United Tribes, the Yakama Nation, and the National Marine Fisheries Service (NMFS) under the National Oceanic and Atmospheric Administration (NOAA). The Task Force also heard public comment and discussed potential recommendations.

The Task Force recognized the benefit of the HSRG review process and the HSRG's contributions to improving hatchery operations in Washington. The majority of the Task Force concludes that the current process of state and tribal co-management of hatchery operations and review of Hatchery Genetic Management Plans (HGMPs) by the NMFS for compliance with the ESA is sufficient. The Task Force recommends that an additional third party scientific review of WDFW's hatchery spending is no longer required.

Task Force Proviso

The following language creating the Hatchery Spending and Project Task Force was included in WDFW's 2019-21 operating budget (Sec. 307 of Chapter 415, Laws of 2019):

"(3)(a) A legislative task force is established to recommend a group or entity to review the department's budget requests in place of the hatchery scientific review group. The task force is comprised of two members from each of the two largest caucuses in the senate, appointed by the president of the senate, and two members from each of the two largest caucuses in the house of representatives, appointed by the speaker of the house. The task force shall be staffed by the office of program research and senate committee services. The task force must consult with tribes.

(b) The task force must review the purpose and activities of the hatchery scientific review group and develop recommendations for the legislature to establish a replacement group or entity that will analyze state spending and projects related to hatcheries that are proposed in state operating and capital budgets. Among other things, the task force shall recommend a process by which the replacement organization or entity, starting with the 2021-2023 fiscal biennium, contracts with the department to review the department's proposed agency biennial operating and capital budget requests related to state fish hatcheries prior to submission to the office of financial management. This review shall: (i) Examine if the proposed

requests are consistent with independent scientific review standards using best available science; (ii) evaluate the components of the request based on the independent needs of each particular watershed and the return of salmonids including naturally spawning, endangered, and hatchery stocks; and (iii) evaluate whether the proposed requests are being made in the most cost-effective manner. This process must require the department to provide a copy of the review to the office of financial management and the legislature with its agency budget proposal.

(c) The task force shall report to the legislature on its findings and recommendations by December 1, 2019."

Task Force Membership

The following members were appointed to the Task Force by their respective chambers. The Co-Chairs were elected during the first meeting of the Task Force.

Representative Brian Blake, Co-Chair
Senator Shelly Short, Co-Chair
Representative Debra Lekanoff
Senator Marko Liias
Representative Drew Stokesbary
Senator Kevin Van De Wege
Senator Keith Wagoner
Representative Jim Walsh

Background

The Hatchery Scientific Review Group (HSRG)

The Hatchery Scientific Review Group (HSRG) is an independent scientific review panel focused on hatchery reform that was established by Congressional appropriation in 2000. The HSRG develops recommendations that reduce the risks to wild salmon populations from hatchery programs. The HSRG is currently composed of 15 members: 7 affiliated with agencies and tribes in the Pacific Northwest, and 8 unaffiliated biologists and scientists. From 2000 to 2004 the HSRG conducted a review of Puget Sound and the Washington Coast hatcheries, and from 2006 to 2009 the HSRG reviewed hatchery operations on the Columbia River. The HSRG receives part of its funding through the Pacific Coast Salmon Recovery Fund, a Federal grant program administered by NOAA.¹

From the 2007-09 biennium through the 2017-19 biennium, WDFW was required to contract with the HSRG to review WDFW's budget requests related to hatcheries. Although the proviso language requiring this HSRG review was contained in WDFW's operating budget (Sec. 307), the review itself typically focused on WDFW's capital budget requests. The proviso requiring the HSRG review was removed from WDFW's budget in 2019-21, in the same budget the Task Force

¹WDFW "Hatchery Reform" Presentation to the Task Force, 9/26/2019

was created, and read as follows:

"(4) Prior to submitting its 2019-2021 biennial operating and capital budget requests related to state fish hatcheries to the office of financial management, the department shall contract with the hatchery scientific review group (HSRG) to review the proposed requests. This review shall: (a) Determine if the proposed requests are consistent with HSRG recommendations; (b) prioritize the components of the requests based on their contributions to protecting wild salmonid stocks and meeting the recommendations of the HSRG; and (c) evaluate whether the proposed requests are being made in the most cost-effective manner. The department shall provide a copy of the HSRG review to the office of financial management with its agency budget proposal."

Hatchery Regulations²

State, tribal, and federal hatcheries in Washington are generally operated for two main purposes, conservation of endangered stocks and harvest opportunity. Fisheries in Washington are managed subject to treaties and subsequent court decisions establishing treaty tribes and the state as co-managers of the resource under *United States vs. Washington, Hoh v. Baldrige*, and *United States vs. Oregon*. Tribal treaty rights include the right to harvest hatchery fish. Hatchery operations are also subject to compliance with the ESA (as a number of specific salmon and other fish populations are listed under the ESA), the Clean Water Act, and the National Environmental Policy Act (NEPA). In addition, there have been third party lawsuits that challenge the operation of hatcheries and their impact on wild salmon.

As required under the ESA, co-managers jointly submit Hatchery Genetic Management Plans (HGMPs) for specific hatcheries to the National Marine Fisheries Service (NMFS). HGMPs evaluate the possible impacts (and options to minimize them) from a hatchery and the fish produced on ESA-listed species. Such impacts include genetic effects, competition and predation, disease risk, and impacts from the hatchery facility. An HGMP also contains details about the operations of the hatchery, including water source, brood collection, rearing and release of hatchery stock, and monitoring and evaluation. Before an HGMP is approved, the NMFS runs risk models and works with the co-managers on changes as needed. Once an HGMP is approved, co-managers monitor impacts as described in the HGMP and must regularly report to the NMFS.

In addition to the HGMP process, the Fish and Wildlife Commission has developed policies pertaining to hatchery production including the Hatchery and Fishery Reform Policy (C-3619, based on recommendations of the HSRG), the Willapa Bay Policy (C-3622), and the Grays Harbor Policy (C-3621).

² WDFW, Northwest Indian Fisheries Commission, and NMFS presentations to the Task Force, 9/26/2019 and 10/23/2019

Summary of Meetings

Initial meeting, September 26, 2019

1. Task Force Member Introductions.
2. Election of Task Force Co-Chairs.
3. Overview of Task Force Proviso.
4. Hatchery Reform and the Hatchery Spending Review Process.

Washington Fish and Wildlife Commission

- Barbara Baker, Vice-Chair

WA Department of Fish & Wildlife (WDFW)

- Eric Kinne, Hatchery Division Manager

Northwest Indian Fisheries Commission (NWIFC)

- Justin Parker, Executive Director
- Ken Currens, Conservation Program Manager

National Oceanic and Atmospheric Administration (NOAA) Fisheries

- Allyson Purcell, Branch Chief for Anadromous Production and Inland Fisheries

Second meeting, October 23, 2019

1. Presentations on hatchery regulation.

Washington Department of Fish & Wildlife (WDFW)

- Ron Warren, Director of Fish Policy
- Eric Kinne, Hatchery Division Manager

Northwest Indian Fisheries Commission (NWIFC)\

- Adrian Spidle, Ph.D., Fishery Geneticist
- Rob Jones, Fisheries Policy Analyst

National Oceanic & Atmospheric Administration (NOAA) Fisheries

- Allyson Purcell, Branch Chief for Anadromous Production and Inland Fisheries
- Craig Busack, Lead Hatchery Geneticist

Upper Columbia United Tribes

- Darnell Sam, Colville Business Council, Fisheries Committee Chair and Chair of the Upper Columbia United Tribes Commission

Yakama Nation

- Philip Rigdon, DNR Superintendent

2. Public comment on hatchery production.
3. Discussion of possible recommendations and next steps.

Summary of Public Testimony

- Peter F. Galbreath, Columbia River Inter-Tribal Fish Commission
- Ron Garner, Puget Sound Anglers
- Butch Smith, Ilwaco Charter Association
- Dale Beasley, Columbia River Crab Fisherman's Association/Coalition of Coastal Fisheries

Hatcheries are an important conservation tool for sustaining salmon populations. The West Coast, including Washington State, has lost a significant amount of habitat. Development, population growth, changing environmental conditions, and flooding have altered salmon habitat. Tribal co-managers, WDFW, and NOAA are all that is needed to regulate hatcheries, and a third-party review is no longer needed. Hatchery production has been significantly reduced, along with the population of orca whales. Salmon are important for orcas, tribes, and to support local fishing communities. Habitat alterations over the years have impacted salmon populations. Salmon hatcheries were developed to mitigate for that habitat loss and to supply salmon to tribes and the people of the Northwest to preserve culture and fishing jobs, especially in coastal communities. Conditions have changed since the original HSRG review. Predation on salmon is very high, and there should be revisions to the Marine Mammal Protection Act. Washington needs to restore salmon fishing to sustain the fishing industry. Science is important, and so are the people in Washington.

Recommendations

In its deliberations, the Task Force recognized the benefit of the HSRG review process and the contributions the HSRG has made to improving hatchery operations in Washington. The majority of the Task Force concludes that the current process of co-management of hatchery operations and review of Hatchery Genetic Management Plans (HGMPs) by the NMFS for compliance with the ESA is sufficient. The Task Force recommends that an additional third-party scientific review of the WDFW's hatchery spending is no longer required.

Joint Legislative Hatchery Spending & Project Task Force
Minority Report
Senator Kevin Van De Wege
Senator Marko Liias

We respectfully disagree with the recommendation in the Task Force majority report that proposes the elimination of independent scientific review by the Hatchery Scientific Review Group. We do concur in the majority report's statement that the "Task Force recognize[s] the benefit of the HSRG process and the contributions the HSRG has made to improving hatchery operations in Washington." With this finding, and recognizing that future changes in hatchery production and operations will require federal scrutiny, we cannot agree with the Task Force recommendation that HSRG review of state hatchery spending "is no longer required."

It is appropriate here to quote excerpts from the 2014 HSRG report to the Congress on the science of hatcheries:

"The role of science is to inform policy decisions, and the HSRG framework provides an alternative to the century old paradigm that guided hatchery policy in the past...."

And NOAA Fisheries has found that it considers the, "HSRG's genetic recommendations as important information to consider with other scientific information in evaluations of hatchery programs" (Final EIS for ten salmon and steelhead hatchery programs in the Duwamish-Green River basin, July 2019). It is also important to note that neither WDFW nor NOAA Fisheries ever testified before the Task Force that independent scientific review of the state's hatchery spending "is no longer required."

The importance of conducting independent scientific reviews of programs and policies is widely recognized. The Legislature mandated creation of an Independent Science Panel when it charged the Puget Sound Partnership with developing an Action Agenda for the recovery of the health of Puget Sound. The Legislature created the Washington Academy of Sciences for the purpose of creating independent panels to independently review proposals developed at the state or local level, in addition to the in-house scientific expertise provided by the proponents of the proposals. The role of independent science allows for open debate, helps separate fact from opinion, and helps bring people together to fairly evaluate issues and define specific risks associated with various decisions. The majority report's recommendation to eliminate the HSRG without any independent scientific review entity to replace it risks driving stakeholders apart, resulting in more litigation that would likely delay much needed hatchery revisions to provide more salmon production.

We believe the Task Force has not sufficiently reviewed the critical role that independent scientific review may play in successfully defending the state's funding decisions to revise its hatchery operations. It never heard testimony from the HSRG or an independent scientist to provide a perspective on the role of the HSRG, but instead heard only from those supporting its elimination or that take no position on the matter. This flaw in the Task Force's proceedings

should be corrected before it concludes its work. The Task Force should delay making its recommendations until it has heard from members of the HSRG and it should also hear from proponents of independent scientific review.

Additionally, the draft majority report's recommendation does not comply with the direction from the Legislature included in the authorizing budget proviso. The proviso directs the task force to "develop recommendations for the legislature to establish a replacement group or entity that will analyze state spending and projects related to hatcheries that are proposed in state operating and capital budgets." The Task Force should comply with this direction by more fully exploring the work of the HSRG to identify process improvements that address stakeholder concerns, and only if appropriate process improvements cannot be identified, then the Task Force should comply with the direction from the Legislature and identify a successor organization or entity to conduct independent scientific review.

In conclusion, we believe that the modest funding for independent scientific review is well worth the investment when considering the value of unbiased and independent review of the science, and the risk of future lawsuits and attendant delays to state production changes. In the meantime, we recommend that funding for independent scientific review be restored to ensure a review of proposed funding in the next biennium can be undertaken.

Kevin Van De Wege
State Senator

Marko Liias
State Senator