

2 **SSB 5126** - H COMM AMD
3 By Committee on Natural Resources

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature finds that the reasonable
8 costs of seizing and forfeiting property involved in wildlife, food
9 fish, and shellfish violations should be recoverable, leaving allocated
10 funds to be used for conservation and propagation. The legislature
11 further finds that court-ordered restitution to the department of fish
12 and wildlife should not be required to be deposited to the general
13 fund, but should be used as intended by the court. Such restitution
14 funds shall be used for fish and wildlife restoration projects and not
15 for department administration.

16 **Sec. 2.** RCW 75.08.230 and 1993 c 340 s 48 are each amended to read
17 as follows:

18 (1) Except as provided in this section, state and county officers
19 receiving the following moneys shall deposit them in the state general
20 fund:

21 (a) The sale of licenses required under this title;

22 (b) The ~~((sale—of))~~ net proceeds from property seized or
23 confiscated under this title;

24 (c) Fines and forfeitures collected under this title, except that
25 restitution costs ordered by a court shall be deposited in the fish
26 habitat restoration fund as established in section 6 of this act;

27 (d) The sale of real or personal property held for department
28 purposes;

29 (e) Rentals or concessions of the department;

30 (f) Moneys received for damages to food fish, shellfish or
31 department property; and

32 (g) Gifts.

33 (2) The director shall make weekly remittances to the state
34 treasurer of moneys collected by the department.

35 (3) All fines and forfeitures collected or assessed by a district

1 court for a violation of this title or rule of the director shall be
2 remitted as provided in chapter 3.62 RCW.

3 (4) Proceeds from the sale of food fish or shellfish taken in test
4 fishing conducted by the department, to the extent that these proceeds
5 exceed the estimates in the budget approved by the legislature, may be
6 allocated as unanticipated receipts under RCW 43.79.270 to reimburse
7 the department for unanticipated costs for test fishing operations in
8 excess of the allowance in the budget approved by the legislature.

9 (5) Proceeds from the sale of salmon and salmon eggs by the
10 department, to the extent these proceeds exceed estimates in the budget
11 approved by the legislature, may be allocated as unanticipated receipts
12 under RCW 43.79.270. Allocations under this subsection shall be made
13 only for hatchery operations partially or wholly financed by sources
14 other than state general revenues or for purposes of processing human
15 consumable salmon for disposal.

16 (6) Moneys received by the director under RCW 75.08.045, to the
17 extent these moneys exceed estimates in the budget approved by the
18 legislature, may be allocated as unanticipated receipts under RCW
19 43.79.270. Allocations under this subsection shall be made only for
20 the specific purpose for which the moneys were received, unless the
21 moneys were received in settlement of a claim for damages to food fish
22 or shellfish, in which case the moneys may be expended for the
23 conservation of these resources.

24 (7) Proceeds from the sale of herring spawn on kelp fishery
25 licenses by the department, to the extent those proceeds exceed
26 estimates in the budget approved by the legislature, may be allocated
27 as unanticipated receipts under RCW 43.79.270. Allocations under this
28 subsection shall be made only for herring management, enhancement, and
29 enforcement.

30 **Sec. 3.** RCW 75.10.030 and 1990 c 144 s 5 are each amended to read
31 as follows:

32 (1) Fisheries patrol officers and ex officio fisheries patrol
33 officers may seize without warrant food fish or shellfish they have
34 reason to believe have been taken, killed, transported, or possessed in
35 violation of this title or rule of the director and may seize without
36 warrant boats, vehicles, gear, appliances, or other articles they have
37 reason to believe (~~is~~~~are~~) are held with intent to violate or (~~has~~
38 ~~have~~) have been used in violation of this title or rule of the

1 director. The articles seized shall be subject to forfeiture to the
2 state, regardless of ownership. Articles seized may be recovered by
3 their owner by depositing into court a cash bond equal to the value of
4 the seized articles but not more than twenty-five thousand dollars.
5 The cash bond is subject to forfeiture to the state in lieu of the
6 seized article.

7 (2)(a) In the event of a seizure of an article under subsection (1)
8 of this section, proceedings for forfeiture shall be deemed commenced
9 by the seizure. Within fifteen days following the seizure, the seizing
10 authority shall serve notice on the owner of the property seized and on
11 any person having any known right or interest in the property seized.
12 Notice may be served by any method authorized by law or court rule,
13 including service by certified mail with return receipt requested.
14 Service by mail shall be deemed complete upon mailing within the
15 fifteen-day period following the seizure.

16 (b) If no person notifies the department in writing of the person's
17 claim of ownership or right to possession of the articles seized under
18 subsection (1) of this section within forty-five days of the seizure,
19 the articles shall be deemed forfeited.

20 (c) If any person notifies the department in writing within forty-
21 five days of the seizure, the person shall be afforded an opportunity
22 to be heard as to the claim or right. The hearing shall be before the
23 director or the director's designee, or before an administrative law
24 judge appointed under chapter 34.12 RCW, except that a person asserting
25 a claim or right may remove the matter to a court of competent
26 jurisdiction if the aggregate value of the articles seized is more than
27 five thousand dollars. The department hearing and any subsequent
28 appeal shall be as provided for in Title 34 RCW. The burden of
29 producing evidence shall be upon the person claiming to be the lawful
30 owner or person claiming lawful right of possession of the articles
31 seized. The department shall promptly return the seized articles to
32 the claimant upon a determination by the director or the director's
33 designee, an administrative law judge, or a court that the claimant is
34 the present lawful owner or is lawfully entitled to possession of the
35 articles seized, and that the seized articles were improperly seized.

36 (d)(i) No conveyance, including vessels, vehicles, or aircraft, is
37 subject to forfeiture under this section by reason of any act or
38 omission established by the owner of the conveyance to have been
39 committed or omitted without the owner's knowledge or consent.

1 (ii) A forfeiture of a conveyance encumbered by a perfected
2 security interest is subject to the interest of the secured party if
3 the secured party neither had knowledge nor consented to the act or
4 omission.

5 (e) When seized property is forfeited under this section the
6 department may retain it for official use unless the property is
7 required to be destroyed, or upon application by any law enforcement
8 agency of the state, release such property to the agency for the use of
9 enforcing this title, or sell such property, and deposit the net
10 proceeds to the state general fund, as provided for in RCW 75.08.230,
11 and deposit the cost of sale and expenses incurred by the department
12 for investigation and prosecution of the forfeiture into the fish
13 habitat restoration fund under section 6 of this act.

14 (f) The net proceeds of the sale of forfeited property is the value
15 of the interest remaining after deducting first, the bona fide security
16 interest and second, the cost of sale and the expenses incurred by the
17 department for investigation and prosecution of the forfeiture.

18 **Sec. 4.** RCW 77.12.170 and 1989 c 314 s 4 are each amended to read
19 as follows:

20 (1) There is established in the state treasury the state wildlife
21 fund which consists of moneys received from:

22 (a) Rentals or concessions of the department;

23 (b) The sale of real or personal property held for department
24 purposes;

25 (c) The sale of licenses, permits, tags, stamps, and punchcards
26 required by this title;

27 (d) Fees for informational materials published by the department;

28 (e) Fees for personalized vehicle license plates as provided in
29 chapter 46.16 RCW;

30 (f) Articles or wildlife sold by the director under this title;

31 (g) Compensation for wildlife losses (~~or~~) and gifts or grants
32 received under RCW 77.12.320, or reimbursements for big game losses
33 received under RCW 77.21.070;

34 (h) Excise tax on anadromous game fish collected under chapter
35 82.27 RCW; (~~and~~)

36 (i) The sale of personal property seized by the department for
37 wildlife violations; and

38 (j) Restitution moneys for violation of this title ordered by

1 courts to be paid to the department.

2 (2) State and county officers receiving any moneys listed in
3 subsection (1) of this section shall deposit them in the state treasury
4 to be credited to the state wildlife fund.

5 **Sec. 5.** RCW 77.21.010 and 1988 c 265 s 3 are each amended to read
6 as follows:

7 (1) A person violating RCW 77.16.040, 77.16.050, 77.16.060,
8 77.16.080, 77.16.210, 77.16.220, 77.16.310, 77.16.320, or 77.32.211, or
9 committing a violation of RCW 77.16.020 or 77.16.120 involving
10 77.16.210, 77.16.220, 77.16.310, 77.16.320, 77.16.340, or 77.32.211, or
11 committing a violation of RCW 77.16.020 or 77.16.120 involving big game
12 or an endangered species is guilty of a gross misdemeanor and shall be
13 punished by a fine of not less than two hundred fifty dollars and not
14 more than one thousand dollars or by imprisonment in the county jail
15 for not less than thirty days and not more than one year or by both the
16 fine and imprisonment. Each subsequent violation within a five-year
17 period of RCW 77.16.040, 77.16.050, or 77.16.060, or of RCW 77.16.020
18 or 77.16.120 involving big game or an endangered species, as defined by
19 the commission under the authority of RCW 77.04.090, shall be
20 prosecuted and punished as a class C felony as defined in RCW
21 9A.20.020. In connection with each such felony prosecution, the
22 director shall provide the court with an inventory of all articles or
23 devices seized under this title in connection with the violation.
24 Inventoried articles or devices shall be disposed of pursuant to RCW
25 77.21.040.

26 (2) A person violating or failing to comply with this title or
27 rules adopted pursuant to this title for which no penalty is otherwise
28 provided is guilty of a misdemeanor and shall be punished for each
29 offense by a fine of five hundred dollars or by imprisonment for not
30 more than ninety days in the county jail or by both the fine and
31 imprisonment. The commission may provide, when not inconsistent with
32 applicable statutes, that violation of a specific rule is an infraction
33 under chapter 7.84 RCW.

34 (3) A person placing traps on private property without permission
35 of the owner, lessee, or tenant where the land is improved and
36 apparently used, or where the land is fenced or enclosed in a manner
37 designed to exclude intruders or to indicate a property boundary line,
38 or where notice is given by posting in a conspicuous manner, is guilty

1 of the misdemeanor of trespass as defined and established in RCW
2 9A.52.010 and 9A.52.080 and shall be punished for each offense by a
3 fine of not less than two hundred fifty dollars.

4 (4) Persons convicted of a violation shall pay the costs of
5 prosecution and the penalty assessment in addition to the fine or
6 imprisonment.

7 (5) The unlawful killing, taking, or possession of each wildlife
8 member constitutes a separate offense.

9 (6) District courts have jurisdiction concurrent with the superior
10 courts ((of)) over misdemeanors and gross misdemeanors committed in
11 violation of this title or rules adopted pursuant to this title and may
12 impose the punishment provided for these offenses. Fines imposed and
13 collected by the district courts shall be disposed as provided for in
14 RCW 3.62.020, except restitution moneys for violation of this title
15 ordered by the court to be paid to the department and reimbursements
16 received under RCW 77.21.070 are to be deposited to the state wildlife
17 fund as provided for in RCW 77.12.170. Superior courts have
18 jurisdiction over felonies committed in violation of this title.

19 NEW SECTION. Sec. 6. A new section is added to chapter 75.08 RCW
20 to read as follows:

21 There is established in the custody of the state treasurer a fish
22 habitat restoration fund. Moneys in the fish habitat restoration fund
23 may be expended by the department for the purposes of protection,
24 rehabilitation, preservation, or conservation of the state fish
25 resources, including their habitats. Only the director or the
26 director's designee may authorize expenditures from the fund. The fund
27 is subject to allotment procedures under chapter 43.88 RCW, but no
28 appropriation is required for expenditures."

29 **SSB 5126** - H COMM AMD
30 By Committee on Natural Resources

31

32 On page 1, line 2 of the title, after "restitution;" strike the
33 remainder of the title and insert "amending RCW 75.08.230, 75.10.030,
34 77.12.170, and 77.21.010; adding a new section to chapter 75.08 RCW;
35 and creating a new section."

1 EFFECT: Clarifies that the amount deducted from the proceeds of
2 sales representing the expenses incurred by The Department of Fish and
3 Wildlife for investigating and prosecuting a forfeiture is deposited
4 into The Fish Habitat Restoration fund.

--- END ---