

SENATE BILL REPORT

ESSB 6328

As Passed Senate, February 17, 1998

Title: An act relating to fish and wildlife code enforcement.

Brief Description: Enacting the fish and wildlife code enforcement act.

Sponsors: Senate Committee on Natural Resources & Parks (originally sponsored by Senators Oke, Jacobsen and Swecker; by request of Department of Fish and Wildlife).

Brief History:

Committee Activity: Natural Resources & Parks: 1/16/98, 2/5/98 [DPS].
Passed Senate, 2/17/98, 49-0.

SENATE COMMITTEE ON NATURAL RESOURCES & PARKS

Majority Report: That Substitute Senate Bill No. 6328 be substituted therefor, and the substitute bill do pass.

Signed by Senators Oke, Chair; Rossi, Vice Chair; Hargrove, Jacobsen, Morton, Snyder, Spanel, Stevens and Swecker.

Staff: Paul Mabrey (786-7412)

Background: The Fisheries Enforcement Code and the Wildlife Enforcement Code, Title 75 RCW and Title 77 RCW respectively, have become difficult to administer and enforce subsequent to the merger of the Department of Fisheries and the Department of Wildlife. The two codes contain dissimilar levels of punishment for similar crimes, dissimilar penalties for identical levels of offense, and confusing cross references. Citizens have difficulty complying with the two codes because of this lack of continuity and coherence. Enforcement of fish and wildlife laws has become unnecessarily complicated.

Summary of Bill: Sixty new provisions are provided which define new offenses, redefine existing criminal laws, and create a uniform approach to laws authorizing prosecution, sentencing, and punishment.

Punishment for crimes defined in the new provisions are standardized according to whether the crime is defined as an infraction, a misdemeanor, a gross misdemeanor, or a felony. The fisheries code definition of the term conviction— is retained and incorporated for resolution of issues involving wildlife restitution. Washington criminal code provisions are incorporated as the standard for classification of crimes. Two levels of violation, 1st and 2nd degree, are established for certain offenses such as game bird offenses, endangered wildlife violations, and unlawful trafficking. The release of deleterious exotic fish or wildlife and harvesting while a license is suspended are each classified as class C felony violations. Offenses involving big game, protected species, and endangered species are treated as separate violations for each animal killed, taken, or possessed. License suspension

procedures are standardized. The Fish and Wildlife Commission is required to promulgate rules regarding the taking of unclassified species, the violation of which constitutes a crime.

The courts are authorized to revoke licenses or suspend privileges. The grounds, form, and procedure for court revocation of licenses and suspension of privileges are provided. The court is required to revoke licenses and suspend privileges of a person convicted of assault of a fish and wildlife officer. Requirements and grounds for the director to suspend privileges are provided.

The commission is given authority and power to administer various provisions of the Fish and Wildlife Enforcement Code as necessitated by the merger of the Department of Fisheries and the Department of Wildlife.

Civil forfeiture provisions are reconciled with current legal forfeiture standards. Language is standardized to reflect the merger of the Department of Fisheries and the Department of Wildlife. The terms wildlife agent– and fisheries patrol– are replaced by the term fish and wildlife officers.–

Technical changes and updated language modifications are made.

Sections of the wildlife code and the fisheries code are repealed as unnecessary or redundant.

Appropriation: None.

Fiscal Note: Requested on January 14, 1998.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Department management provided overview of why the bill is necessary and how the process was accomplished. The bill is necessary to remove confusing, conflicting, and redundant language. Further, the bill combines the enforcement sections of Title 75 and Title 77 into one easy to understand and use format based on the penal code format. Modernization of language was done to bring the statute to reflect the merger of the Department of Wildlife and the Department of Fisheries.

Testimony Against: None

Testified: Bruce Bjork, Don Gatlin, Ron Peregrin, WDFW Region 6; Ed Owens, Coalition of Coastal Fisheries.

House Amendment(s):

Language changes are made throughout the bill to clarify and modernize.

Court authority is replaced by departmental authority with regard to penalty decisions and license or privilege suspensions or revocations.

The offense, weapons, traps or dogs on game preserves, is amended to exclude persons in possession of a handgun who possess a valid concealed weapons permit.

An affirmative defense in violating obstructing the taking of fish or wildlife is eliminated (preventing the of killing an endangered or protected species).

Clarification is provided as to what constitutes a loaded firearm for purposes of unlawful possession of a loaded firearm.

Wildlife check stations are prohibited on interstate highways or state routes.

Provision is made for substituting a nondesignated boat for a designated boat when the designated boat is inoperable.

The penalty for unlawful failure to use and maintain fish guards is increased from a misdemeanor to a gross misdemeanor. Written notification of a violation is required for an offense to be cumulative.

The penalty for unlawful failure to provide, maintain or operate a fishway dam is increased from a misdemeanor to a gross misdemeanor. Written notification of a violation is required for an offense to be cumulative.

The penalty for violation of a rule regarding inspection and control of aquatic farms is changed from a gross misdemeanor to a misdemeanor.

Clarification is made regarding the criminal wildlife penalty assessment statute and changes are made regarding the disposition of collected fines. The disposition changes from depositing moneys in the wildlife fund to depositing moneys with the clerk of the court who disperses the moneys to the general fund's public safety and education account.

The provision granting the department broad powers to suspend privileges, impose conditions on privileges, and requiring the posting of a bond is eliminated. The provision mandating that the director suspend privileges of a person who has committed an act punishable by suspension when the court fails to do so is eliminated.

The provision in current law that allows fish and wildlife officers to enforce all criminal laws of the state only when the offense occurs in the presence of the officer is reinstated.

The provision that allows fish and wildlife officers to make a reasonable search of a person without a warrant is eliminated.

The amendment expands and clarifies the provision that provides authority for fish and wildlife officers to inspect containers, fishing equipment, fish and wildlife without a warrant.

There is a language change regarding what constitutes separate offenses. The amendment eliminates the killing of fish or wildlife as an index of a separate offense.

The threshold is increased for violation of unlawful hunting of game birds,– unlawful taking of endangered fish or wildlife,– unlawful taking of protected fish or wildlife,– and unlawful taking of unclassified fish or wildlife.– The reckless– standard is eliminated and, instead, the amendment requires that the person act maliciously in order to be in violation of certain provisions of these sections.

The amendment clarifies what is considered a loaded firearm. A firearm is not considered loaded if the detachable clip or magazine is not inserted or attached to the firearm.

In the section related to inspections of commercial enterprises involved with wildlife, the amendment clarifies where fish and wildlife officers may search without a warrant and under what conditions such a search is permitted. The section is not changed substantively.