
SENATE BILL 5561

State of Washington

55th Legislature

1997 Regular Session

By Senators Swecker and Snyder

Read first time 01/31/97. Referred to Committee on Natural Resources & Parks.

1 AN ACT Relating to regulation of geoduck harvesting; amending RCW
2 75.10.190, 75.24.100, 75.30.050, 75.30.280, 79.96.085, 79.96.130, and
3 82.27.020; adding a new section to chapter 75.30 RCW; recodifying RCW
4 79.96.085; repealing RCW 79.96.906 and 79.96.080; and prescribing
5 penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 75.10.190 and 1996 c 267 s 17 are each amended to read
8 as follows:

9 Persons who fish, buy, or sell food fish and shellfish commercially
10 and violate this title or the rules of the department shall be subject
11 to the following penalties:

12 (1) The following violations are misdemeanors and are punishable
13 under RCW 9.92.030:

14 (a) The failure to complete a fish ticket with all the required
15 information for a commercial fish or shellfish landing; and

16 (b) The failure to report a commercial fish catch as required by
17 department rules.

18 (2) The following violations are gross misdemeanors and are
19 punishable under RCW 9.92.020:

1 (a) The retention of illegal food fish or shellfish species;
2 (b) The wasting of commercially caught food fish or shellfish;
3 (c) Commingling commercial and personal use food fish or shellfish
4 catches;
5 (d) The failure to comply with department rules on commercial
6 fishing licenses;
7 (e) The failure to comply with department requirements on fishing
8 gear specifications;
9 (f) The failure to obtain a delivery license as required by
10 department rules;
11 (g) Violations of the fisheries statutes or rules by fish buyers or
12 wholesale dealers other than violations for fish tickets under
13 subsection (1)(a) of this section;
14 (h) Fishing during a closed season;
15 (i) Illegal geoduck harvesting off the legal harvesting (~~tract~~)
16 area; and
17 (j) Other unclassified commercial violations of Title 75 RCW.
18 (3) The following violations are class C felonies and are
19 punishable under RCW 9A.20.021(1)(c):
20 (a) Intentionally fishing in a closed area using fishing gear not
21 authorized under personal use regulations;
22 (b) Intentionally netting salmon in the Pacific Ocean;
23 (c) Harvesting more than one hundred pounds of geoducks outside of
24 the boundaries of a harvest (~~tract~~) area designated by (~~a harvest~~
25 ~~agreement from~~) the department of (~~natural resources~~) fish and
26 wildlife if:
27 (i) The harvester does not have a valid (~~harvesting agreement~~)
28 geoduck dive fishery license from the department of (~~natural~~
29 ~~resources~~) fish and wildlife; or
30 (ii) The harvesting is done more than one-half mile from the
31 nearest boundary of any harvesting (~~tract~~) area designated by (~~a~~)
32 the department of (~~natural resources harvesting agreement~~) fish and
33 wildlife;
34 (d) Unlawful participation by a non-Indian fisher with intent to
35 profit in a treaty Indian fishery;
36 (e) Intentionally fishing within the closed waters of a fish
37 hatchery;
38 (f) The sale, barter, or trade of food fish or shellfish with a
39 wholesale value of two hundred fifty dollars or more by a person who

1 does not have a valid commercial fishing license and has caught the
2 food fish or shellfish using fishing gear not authorized under personal
3 use rules, or has received the food fish or shellfish from someone who
4 has caught it with fishing gear not authorized under personal use
5 rules; and

6 (g) Being in possession of food fish or shellfish with a wholesale
7 value of two hundred fifty dollars or more while using fishing gear not
8 authorized under personal use regulations without a valid commercial
9 fishing license.

10 **Sec. 2.** RCW 75.24.100 and 1995 1st sp.s. c 2 s 29 (Referendum Bill
11 No. 45) are each amended to read as follows:

12 (1) It is unlawful to take geoduck clams for commercial purposes
13 outside the harvest area designated in a current department of
14 (~~natural resources~~) fish and wildlife geoduck harvesting (~~agreement~~
15 ~~issued under RCW 79.96.080~~) program. It is unlawful to commercially
16 harvest geoduck clams from bottoms that are shallower than eighteen
17 feet below mean lower low water (0.0. ft.)(~~, or that lie in an area~~
18 ~~bounded by the line of ordinary high tide (mean high tide) and a line~~
19 ~~two hundred yards seaward from and parallel to the line of ordinary~~
20 ~~high tide~~). This section does not apply to the harvest of private
21 sector cultured aquatic products as defined in RCW 15.85.020.

22 (2) Commercial geoduck harvesting shall be done with a hand-held,
23 manually operated water jet or suction device guided and controlled
24 from under water by a diver. Periodically, the commission shall
25 determine the effect of each type or unit of gear upon the geoduck
26 population or the substrate they inhabit. The commission may require
27 modification of the gear or stop its use if it is being operated in a
28 wasteful or destructive manner or if its operation may cause permanent
29 damage to the bottom or adjacent shellfish populations.

30 **Sec. 3.** RCW 75.30.050 and 1995 c 269 s 3101 are each amended to
31 read as follows:

32 (1) The director shall appoint three-member advisory review boards
33 to hear cases as provided in RCW 75.30.060. Members shall be from:

34 (a) The commercial crab fishing industry in cases involving
35 Dungeness crab ~~»~~ Puget Sound fishery licenses;

36 (b) The commercial herring fishery in cases involving herring
37 fishery licenses;

1 (c) The commercial sea urchin and sea cucumber fishery in cases
2 involving sea urchin and sea cucumber dive fishery licenses;

3 (d) The commercial ocean pink shrimp industry (*Pandalus jordani*) in
4 cases involving ocean pink shrimp delivery licenses; ~~((and))~~

5 (e) The commercial coastal crab fishery in cases involving
6 Dungeness crab coastal fishery licenses and Dungeness crab coastal
7 class B fishery licenses. The members shall include one person from
8 the commercial crab processors, one Dungeness crab coastal fishery
9 license holder, and one citizen representative of a coastal community;
10 and

11 (f) The commercial geoduck fishing industry in cases involving
12 geoduck fishery licenses.

13 (2) Members shall serve at the discretion of the director and shall
14 be reimbursed for travel expenses as provided in RCW 43.03.050,
15 43.03.060, and 43.03.065.

16 **Sec. 4.** RCW 75.30.280 and 1993 c 340 s 46 are each amended to read
17 as follows:

18 (1) It is unlawful to harvest geoduck clams commercially without a
19 geoduck fishery license. This section does not apply to the harvest of
20 private sector cultured aquatic products as defined in RCW 15.85.020.

21 ~~((Only a person who has entered into a geoduck harvesting~~
22 ~~agreement with the department of natural resources under RCW 79.96.080~~
23 ~~may hold a geoduck fishery license.~~

24 ~~(3))~~ A geoduck fishery license authorizes no taking of geoducks
25 outside the boundaries of the ~~((public lands))~~ harvest areas designated
26 ~~((in the underlying harvesting agreement,))~~ by the department of fish
27 and wildlife or beyond the harvest ceiling set in the ~~((underlying~~
28 ~~harvesting agreement))~~ individual fishing quotas assigned for each
29 area.

30 ~~((4))~~ (3) A geoduck fishery license expires ~~((when the underlying~~
31 ~~geoduck harvesting agreement terminates))~~ on December 31st of the year
32 issued.

33 ~~((5) The director shall determine the number of geoduck fishery~~
34 ~~licenses that may be issued for each geoduck harvesting agreement, the~~
35 ~~number of units of gear whose use the license authorizes, and the type~~
36 ~~of gear that may be used, subject to RCW 75.24.100. In making those~~
37 ~~determinations, the director shall seek to conserve the geoduck~~
38 ~~resource and prevent damage to its habitat.~~

1 ~~(6) The holder of a geoduck fishery license and the holder's agents~~
2 ~~and representatives shall comply with all applicable commercial diving~~
3 ~~safety regulations adopted by the federal occupational safety and~~
4 ~~health administration established under the federal occupational safety~~
5 ~~and health act of 1970 as such law exists on May 8, 1979, 84 Stat. 1590~~
6 ~~et seq.; 29 U.S.C. Sec. 651 et seq. A violation of those regulations~~
7 ~~is a violation of this subsection. For the purposes of this section,~~
8 ~~persons who dive for geoducks are "employees" as defined by the federal~~
9 ~~occupational safety and health act. A violation of this subsection is~~
10 ~~grounds for suspension or revocation of a geoduck fishery license~~
11 ~~following a hearing under the procedures of chapter 34.05 RCW. The~~
12 ~~department shall not suspend or revoke a geoduck fishery license if the~~
13 ~~violation has been corrected within ten days of the date the license~~
14 ~~holder receives written notice of the violation. If there is a~~
15 ~~substantial probability that a violation of the commercial diving~~
16 ~~standards could result in death or serious physical harm to a person~~
17 ~~engaged in harvesting geoduck clams, the department shall suspend the~~
18 ~~license immediately until the violation has been corrected. If the~~
19 ~~license holder is not the operator of the harvest vessel and has~~
20 ~~contracted with another person for the harvesting of geoducks, the~~
21 ~~department shall not suspend or revoke the license if the license~~
22 ~~holder terminates its business relationship with that person until~~
23 ~~compliance with this subsection is secured.)) (4) After July 1, 1997,~~
24 the director may not issue new geoduck dive fishery licenses. Only a
25 person who has held the geoduck fishery license sought to be renewed
26 for at least three of the six years 1991, 1992, 1993, 1994, 1995, and
27 1996 may renew an existing license.

28 (5) Geoduck dive fishery licenses are not transferable from one
29 license holder to another except from parent to child, from spouse to
30 spouse during marriage or as a result of marriage dissolution, or upon
31 death of the license holder.

32 **Sec. 5.** RCW 79.96.085 and 1990 c 163 s 5 are each amended to read
33 as follows:

34 (1) The department of ((natural resources)) fish and wildlife shall
35 establish a catch limit and designate the areas of aquatic lands
36 ((owned by the state)) that are available for geoduck harvesting by
37 licensed geoduck harvesters ((in accordance with chapter 79.90 RCW)).

1 (2) Once a harvest ceiling is established for each area, the
2 ceiling must be divided equally between the number of geoduck dive
3 fishery license holders to establish individual fishing quotas for each
4 area. License holders will have from January 1st until December 31st
5 of each year, with the exception of emergency closures by the
6 department of fish and wildlife, to harvest their individual fishing
7 quotas from each area made available for harvest.

8 **Sec. 6.** RCW 79.96.130 and 1994 c 264 s 73 are each amended to read
9 as follows:

10 (1) If a person wrongfully takes shellfish or causes shellfish to
11 be wrongfully taken from the public lands and the wrongful taking is
12 intentional and knowing, then the person shall be liable for damages of
13 treble the fair market retail value of the amount of shellfish
14 wrongfully taken. If a person wrongfully takes shellfish from the
15 public lands under other circumstances, then the person shall be liable
16 for damages of double the fair market value of the amount of shellfish
17 wrongfully taken.

18 (2) For purposes of this section, a person "wrongfully takes"
19 shellfish from public lands if the person takes shellfish: (a) Above
20 the limits of any applicable laws that govern the harvest of shellfish
21 from public lands; (b) without reporting the harvest to the department
22 of fish and wildlife or the department of natural resources where such
23 reporting is required by law or contract; (c) outside the area or above
24 the limits that an agreement or contract from the department of natural
25 resources allows the harvest of shellfish from public lands; or (d)
26 without a lease or purchase of the shellfish where such lease or
27 purchase is required by law prior to harvest of the shellfish.

28 (3) The remedies in this section are for civil damages and shall be
29 proved by a preponderance of the evidence. The department of natural
30 resources may file a civil action in Thurston county superior court or
31 the county where the shellfish were taken against any person liable
32 under this section. ~~((Damages recovered under this section shall be
33 applied in the same way as received under geoduck harvesting agreements
34 authorized by RCW 79.96.080.))~~

35 (4) For purposes of the remedies created by this section, the
36 amount of shellfish wrongfully taken by a person may be established
37 either:

1 (a) By surveying the aquatic lands to reasonably establish the
2 amount of shellfish taken from the immediate area where a person is
3 shown to have been wrongfully taking shellfish;

4 (b) By weighing the shellfish on board any vessel or in possession
5 of a person shown to be wrongfully taking shellfish; or

6 (c) By any other evidence that reasonably establishes the amount of
7 shellfish wrongfully taken.

8 The amount of shellfish established by (a) or (b) of this
9 subsection shall be presumed to be the amount wrongfully taken unless
10 the defendant shows by a preponderance of evidence that the shellfish
11 were lawfully taken or that the defendant did not take the shellfish
12 presumed to have been wrongfully taken. Whenever there is reason to
13 believe that shellfish in the possession of any person were wrongfully
14 taken, the department of natural resources or the department of fish
15 and wildlife may require the person to proceed to a designated off-load
16 point and to weigh all shellfish in possession of the person or on
17 board the person's vessel.

18 (5) This civil remedy is supplemental to the state's power to
19 prosecute any person for theft of shellfish, for other crimes where
20 shellfish are involved, or for violation of regulations of the
21 department of fish and wildlife.

22 **Sec. 7.** RCW 82.27.020 and 1993 sp.s. c 17 s 12 are each amended to
23 read as follows:

24 (1) In addition to all other taxes, licenses, or fees provided by
25 law there is established an excise tax on the commercial possession of
26 enhanced food fish as provided in this chapter. The tax is levied upon
27 and shall be collected from the owner of the enhanced food fish whose
28 possession constitutes the taxable event. The taxable event is the
29 first possession in Washington by an owner. Processing and handling of
30 enhanced food fish by a person who is not the owner is not a taxable
31 event to the processor or handler.

32 (2) A person in possession of enhanced food fish and liable to this
33 tax may deduct from the price paid to the person from which the
34 enhanced food fish (except oysters) are purchased an amount equal to a
35 tax at one-half the rate levied in this section upon these products.

36 (3) The measure of the tax is the value of the enhanced food fish
37 at the point of landing.

1 (4) The tax shall be equal to the measure of the tax multiplied by
2 the rates for enhanced food fish as follows:

3 (a) Chinook, coho, and chum salmon and anadromous game fish: Five
4 and twenty-five one-hundredths percent.

5 (b) Pink and sockeye salmon: Three and fifteen one-hundredths
6 percent.

7 (c) Other food fish and shellfish, except oysters: Two and one-
8 tenth percent.

9 (d) Oysters: Eight one-hundredths of one percent.

10 (e) Geoducks: Ten percent gross volume tax dedicated to resource
11 maintenance, enforcement, and enhancement.

12 (5) An additional tax is imposed equal to the rate specified in RCW
13 82.02.030 multiplied by the tax payable under subsection (4) of this
14 section.

15 NEW SECTION. Sec. 8. The following acts or parts of acts are each
16 repealed:

17 (1) RCW 79.96.906 and 1994 c 264 s 74 & 1984 c 221 s 26; and

18 (2) RCW 79.96.080 and 1990 c 163 s 4 & 1982 1st ex.s. c 21 s 141.

19 NEW SECTION. Sec. 9. RCW 79.96.085, as amended by this act, is
20 recodified as a section in chapter 75.30 RCW.

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