
SENATE BILL 6584

State of Washington

55th Legislature

1998 Regular Session

By Senators Oke and Snyder

Read first time 01/22/98. Referred to Committee on Natural Resources & Parks.

1 AN ACT Relating to damage by marine mammals; adding a new chapter
2 to Title 77 RCW; and declaring an emergency.

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

4 NEW SECTION. **Sec. 1.** (1) The legislature finds that finfish net-
5 pen aquaculture is valuable to the state of Washington. The
6 legislature recognizes that despite precautions taken by net-pen
7 farmers, marine mammals occasionally penetrate the double netting on
8 net pens and feed upon the penned finfish. The legislature
9 acknowledges that marine mammals thus cause economic damages to net-pen
10 farmers. The legislature is also mindful that marine mammals are
11 protected species and that, without legislative redress, net-pen
12 farmers have few remedial options.

13 (2) The legislature intends to provide net-pen farmers with a
14 remedy for damages caused by marine mammals. A timely and simple
15 process should be established to resolve the net-pen farmers' claims
16 for damages caused by marine mammals.

17 NEW SECTION. **Sec. 2.** The definitions in this section apply
18 throughout this chapter, unless the context clearly requires otherwise.

1 (1) "Department" means the department of fish and game.

2 (2) "Marine mammals" means cetaceans, pinnipeds, sea otters, and
3 river otters associated with marine and estuarine waters of the state,
4 and including especially the pinnipeds commonly known as seals and sea
5 lions.

6 (3) "Net-pen finfish" means swimming fish, plural, fry, and adults,
7 produced or raised in floating pens comprised of netting, including the
8 living finfish contained in those pens.

9 NEW SECTION. **Sec. 3.** (1) The director of the department or the
10 director's designee may distribute money appropriated to pay claims for
11 damages to net-pen finfish caused by marine mammals. Damages payable
12 under this section are limited to the value of the commercially
13 produced or raised net-pen finfish and may be paid only to the person
14 owning the net-pen finfish at the time of the damage, without
15 assignment. Damages may include damage which marine mammals cause to
16 the net pens, lost profits, consequential damages, and other damages.

17 (2) The director may adopt rules for the form of affidavits or
18 proof to be provided in claims under this section. The director may
19 adopt rules to specify the time and method of assessing damage. The
20 burden of proving damages shall be on the claimant. Payment of claims
21 shall remain subject to the other conditions and limits of this
22 chapter.

23 (3) If funds are limited, payments of claims shall be prioritized
24 in the order that the claims are received. No claim may be processed
25 if:

26 (a) The claimant did not notify the department within ten days of
27 discovery of the damage. If the claimant intends to take steps that
28 prevent determination of damages, such as sale of damaged net pens or
29 net-pen finfish, the claimant shall notify the department as soon as
30 reasonably possible after discovery so that the department has an
31 opportunity to document the damage and take steps to prevent additional
32 damage; or

33 (b) The claimant did not present a complete, written claim within
34 sixty days after the damage, or the last day of damaging if the damage
35 was of a continuing nature.

36 (4) The director or the director's designee may examine and assess
37 the damage upon notice. The department and claimant may agree to an
38 assessment of damages by a neutral person or persons knowledgeable in

1 finfish net-pen aquacultural practices. The department and claimant
2 shall share equally in the costs of such third party examination and
3 assessment of damage.

4 (5) There shall be no payment for damages if:

5 (a) The claimant failed to use or maintain applicable and legal
6 damage prevention materials or methods;

7 (b) The director has expended all funds appropriated for payment of
8 such claims for the current fiscal year; or

9 (c) The damages are covered by insurance. The claimant shall
10 notify the department at the time of claim of insurance coverage in the
11 manner required by the director. Insurance coverage shall cover all
12 damages prior to any payment under this chapter.

13 (6) When there is a determination of claim by the director or the
14 director's designee pursuant to this section, the claimant has sixty
15 days to accept the claim or it is deemed rejected.

16 NEW SECTION. **Sec. 4.** Sections 1 through 3 of this act constitute
17 a new chapter in Title 77 RCW.

18 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
19 preservation of the public peace, health, or safety, or support of the
20 state government and its existing public institutions, and takes effect
21 immediately.

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