

HOUSE BILL REPORT

SHB 1057

As Amended by the Senate

Title: An act relating to commercial fishing violations.

Brief Description: Creating the license suspension review committee.

Sponsors: By House Committee on Fisheries, Ecology & Parks (originally sponsored by Representatives Hatfield, Buck, Blake and Kessler).

Brief History:

Committee Activity:

Fisheries, Ecology & Parks: 1/23/03, 2/6/03 [DPS].

Floor Activity:

Passed House: 2/12/03, 97-0.

Senate Amended.

Passed Senate: 4/11/03, 49-0.

House Refused to Concur.

Senate Receded.

Senate Amended.

Passed Senate: 4/23/03, 46-0.

Brief Summary of Substitute Bill

- Amends the existing commercial fishing license suspension provisions by providing the Director of the Department of Fish and Wildlife with discretionary authority to suspend the license of an individual who is convicted of two qualifying fishing related gross misdemeanors or felonies within a three-year period.
- Defines the minimum standards for a qualifying commercial fishing violation.
- Establishes the License Suspension Review Committee to hear license suspension appeals from commercial fishers.

HOUSE COMMITTEE ON FISHERIES, ECOLOGY & PARKS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Cooper, Chair; Berkey, Vice Chair; Sump, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Buck, Hatfield,

O'Brien, Pearson and Upthegrove.

Staff: Jason Callahan (786-7117).

Background:

A commercial fishing violation is generally punishable as either a misdemeanor, gross misdemeanor, or a felony. Misdemeanor violations are punishable by up to 90 days in jail and a fine of up to \$1,000. Gross misdemeanors are punishable by up to one year in jail and a fine of up to \$5,000, and felonies can result in a prison sentence of up to 10 years and a fine of up to \$20,000.

In addition to criminal sanctions, the Director of the Department of Fish and Wildlife (Department) must suspend all commercial fishing privileges for a person who is convicted of two gross misdemeanors or felonies involving commercial fishing within a five-year period. Suspended licenses may not be transferred or used by an alternate operator. The department may also issue a life suspension if it finds willful or wanton disregard for the conservation of fish or wildlife.

Summary of Substitute Bill:

The Director of the Department has discretionary authority to suspend a person's privileges to participate in a particular commercial fishery if that person has been convicted of two or more "qualifying commercial violations" within a three-year period. Suspensions may not exceed one year and a suspended license may not be transferred or used by an alternate operator if the person committing the violations is the license holder, and not an alternate operator. Any suspension is in addition to the criminal penalties attached to the underlying criminal infraction.

A commercial fishing violation can be judged as a "qualifying commercial violation" a number of ways; however, all qualifying commercial violations must first be either a gross misdemeanor or a felony. To qualify, certain violations must involve a specific minimum amount of harvested product. For shellfish harvesters, including crab, all qualifying commercial violations must involve at least 50 individual unlawfully harvested shellfish, and those unlawful shellfish must make up at least 6 percent of the total harvest.

In order for a violation of regulations for fish, other than groundfish and coastal pelagic baitfish, to qualify as a minimum commercial fishing violation, the total weight of the unlawful portion of the harvest must be greater than 6 percent of the total harvest, and the unlawful portion of the harvest must be valued at greater than \$250. Violations of groundfish and coastal pelagic baitfish fisheries are considered qualifying violations if the unlawfully harvested individuals total greater than 10 percent of the total catch and are

valued at more than \$500. Alternatively, for a groundfish or coastal pelagic baitfish species that is categorized as over-fished by the National Marine Fisheries Service, that is greater than 10 percent of the harvest limit allowed by the Department for that fishery is also considered a qualifying violation.

Some violations are considered to be qualifying commercial violations regardless of the amount of product involved. These violations are: fishing without a license, chartering without a license, using unlawful gear or an unlawful method, using a non-designated vessel, fishing at an improper time, participating in a treaty fishery, using illegal nets, and using a commercial vessel for recreational pursuits.

In addition to fishers who have been convicted of two qualifying commercial violations within three years, the Director of the Department can recommend license suspension if one violation is judged by the Director to be of a severe magnitude. The Director can also recommend license suspension for an individual that has been convicted of a shellfish violation involving 500 or more unlawfully harvested shellfish valued at greater than \$2,500, if the quantity of unlawful shellfish totals more than 20 percent of the harvest.

Any commercial fisher that is issued a suspension order from the Director of the Department may appeal that suspension to the License Suspension Review Committee (Committee). The Committee is appointed by the Fish and Wildlife Commission (Commission), and is comprised of two Department employees and three commercial fishers from different counties. In addition, the Commission can name up to four alternative members that may vote when one of the regular members is unavailable or has been recused.

The Committee must hear and decide on all appeals within three months, during which time the members can collect information and hear testimony regarding any extenuating circumstances surrounding a violation. The majority decision of the Committee is final, except for judicial review, and the Committee may waive, decrease, or increase the suspension length set by the Director of the Department. However, no suspensions may be issued for greater than one year.

Fishers that receive a suspension notice from the Director of the Department have 31 days to file an appeal with the Committee. After 31 days the right to an appeal is considered waived and the suspension period commences.

EFFECT OF SENATE AMENDMENT(S):

Changes the final decision of the License Suspension Review Committee from being binding on the director of the department, to being advisory. Provides the attorney in fact, guardian, spouse, estate, or beneficiary of a fisher 180 days to renew a commercial fishing license if the fisher dies or becomes incapacitated.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) The state needs to take a more reasonable approach to how it regulates an industry as complex and diverse as the commercial fishing industry. The nuances of the industry often require complex answers. The fishing industry has worked with the Department to find a solution that treats all of the fisheries fairly.

Violations that seriously undermine the fishing resource should be punished, but common sense should be worked into the system to address the mitigating circumstances that can arise. Fishery rules are complex, and easy to inadvertently violate. Often innocent mistakes can be made when the fishers are working with a high volume of fish in dangerous conditions. Currently, the Director of the Department of Fish and Wildlife does not have the authority to take mitigating factors into consideration. This lack of discretion often places law enforcement officers, county prosecutors, and the Director of the Department into unfair situations.

Sometimes fishing violations are so severe that the violator should not receive the benefit of doubt. Egregious violations should result in immediate suspension. Such a system helps to preserve the fishing industry, and the industry is requesting the change.

The License Suspension Review Committee should have the final say as to whether a suspension will be issued. Committees that are merely advisory in nature are often a waste of the participant's time. A jury of one's peers is used in criminal proceedings, and that concept should be applied to commercial fishing license suspensions. Any solution that allows the participants to solve their problems administratively, as opposed to going into court, saves both the state and the private citizen considerable amounts of money. The object is not to create a system that allows the violators to walk away, but to create a system that reaches a more expeditious conclusion.

Even if a fisher does not receive a suspension, he or she is still punished by the criminal sanctions attached to the underlying violation. The criminal penalties are usually all that is needed to protect the fisheries resource.

(With comments) The License Suspension Review Committee should only be advisory in nature. The Director of the Department of Fish and Wildlife should have the final say in regards to suspensions. The Director has the authority to issue fishing licenses, and should have the authority to also take them away when appropriate. A panel of individuals appointed by the Fish and Wildlife Commission would have a strong effect on any final decisions reached by the Director.

Testimony Against: None.

Testified: (In support) Dale Beasley, Columbia River Crab Fisherman Association; and Phil Anderson, Department of Fish and Wildlife.

(In support, with comments) Doug Frick, Washington Trollers Association.

(In support, with concerns) Ed Owens, Coalition of Coastal Fisheries; and Evan Jacoby, Department of Fish and Wildlife.