

# HOUSE BILL REPORT

## ESB 6821

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### As Reported by House Committee On:

Agriculture & Natural Resources  
Appropriations Subcommittee on General Government & Audit Review

**Title:** An act relating to fish and wildlife harvest management.

**Brief Description:** Concerning fish and wildlife harvest management.

**Sponsors:** Senators Hatfield and Jacobsen.

### Brief History:

#### Committee Activity:

Agriculture & Natural Resources: 2/25/08, 2/27/08 [DPA];  
Appropriations Subcommittee on General Government & Audit Review: 2/29/08[DPA  
(AGNR & APPG)].

### Brief Summary of Engrossed Bill (As Amended by House Committee)

- Expands the list of documents that the Washington Department of Fish and Wildlife does not have to disclose under the state's public records laws to include information received or accessed that is included in the confidentiality provisions of its joint enforcement agreement under the Magnuson-Stevens Fishery Conservation Act.
- Authorizes the Washington Department of Fish and Wildlife to purchase commercial fishing vessels, state-issued commercial fishing licenses, delivery permits, and charter boat licenses if the owner of the vessel and license has been substantially restricted from fishing due to compliance with a specific federal court decision and if federal money is available.

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## HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** Do pass as amended. Signed by 13 members: Representatives Blake, Chair; Van De Wege, Vice Chair; Kretz, Ranking Minority Member; Warnick, Assistant

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Ranking Minority Member; Eickmeyer, Grant, Kristiansen, Lantz, Loomis, McCoy, Nelson, Newhouse and Orcutt.

**Staff:** Jason Callahan (786-7117).

**Background:**

Joint Enforcement Agreements with the Federal Government

The Magnuson-Stevens Fishery Conservation Act (MSFCA) was adopted by the United States Congress and serves as the primary law governing marine fisheries in federal waters. The MSFCA contains a provision that allows the governor of a state bordering the Pacific Ocean to request that the Secretary of the U.S. Department of Commerce (USDC) enter into a joint enforcement agreement with the state for the enforcement of fisheries laws in federal waters. A state is only eligible to be included in a joint enforcement agreement if the state can provide for confidentiality of data and information submitted to the state or the USDC under the MSFCA and the joint enforcement agreement.

If a state and the USDC enter into a joint enforcement agreement, the Secretary of the USDC must allocate funds to assist in the implementation of the joint enforcement agreement. Funding allocations must be fairly distributed to the various states operating under a joint enforcement agreement.

Currently, the Washington Department of Fish and Wildlife (WDFW) is operating under a joint enforcement agreement with the federal government under the MSFCA. The current joint enforcement agreement expires in September of 2008.

Public Disclosure and the WDFW

Unless a specific exemption exists, all state agencies are required to make available for inspection and copying all documents that contain information relating to the conduct of government or the performance of a governmental or proprietary function. Of the exemptions to the public disclosure laws, three broad categories of exemptions are specific to documents generated or maintained by the WDFW. The exempted information includes certain commercial fishing catch data, sensitive wildlife data, and certain personally identifying information from individuals who purchase a commercial or recreational hunting or fishing license.

All documents maintained by the WDFW not otherwise exempted are eligible for public disclosure.

State Purchasing of Fishing Licenses and Vessels

The WDFW was authorized in the 1970s to purchase commercial fishing vessels, state-issued commercial fishing licenses, delivery permits, and charter boat licenses if the owner of the vessel had been substantially restricted from fishing due to compliance with two specific federal court orders relating to the management of fishery resources between the state and tribal governments. All purchased licenses were required to be permanently retired.

A qualified marine surveyor was responsible for determining the price paid for the state purchases, up to a maximum set by the WDFW. Purchased vessels were eligible for resale by the WDFW; however, purchased vessels were not able to be resold to the original owner of the original owner's family for further use in commercial fisheries.

#### The "Rafeedie Decision"

Pursuant to a federal district court decision, Washington shares management authority over shellfish management with tribal co-managers [*U.S. v. Washington*, 873 F. Supp 1422 (1994), often referred to as the "Rafeedie Decision" after the judge who decided the case]. The Rafeedie decision and a later decision [*U.S. v. Washington*, 898 F. Supp 1453 (1995)], describe how the court expects the state and the tribes to share equal portions of the sustainable harvest biomass of any shellfish species. The state and tribal co-managers are directed by the court to enter into management plans to implement the decision and to comply with the terms of all management plans.

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#### **Summary of Amended Bill:**

##### Public Disclosure and the WDFW

The list of documents that the WDFW does not have to disclose under the state's public records laws is expanded to include information received or accessed by the WDFW included in the confidentiality provisions of its joint enforcement agreement under the MSFCA.

##### State Purchasing of Fishing Licenses and Vessels

The WDFW is authorized to purchase commercial fishing vessels, state-issued commercial fishing licenses, delivery permits, and charter boat licenses if the owner of the vessel and license has been substantially restricted from fishing due to compliance with the Rafeedie Decision if federal funding is available.

The conditions and requirements of the original vessel and license buyback program are applied to the new purchases, including the valuation and limitation on further sales of vessels and requirements for the permanent retirement of purchased vessels.

#### **Amended Bill Compared to Original Bill:**

Eliminates an existing definition and requires federal funding to trigger the license and vessel purchase authority of the WDFW.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Fisheries harvest information is collected by the federal government and used to monitor harvest and make management decisions, but the federal and state law regarding the disclosure of this information is not in sync. If the state cannot maintain its joint enforcement agreement, then its commercial fishers will find themselves at a competitive disadvantage, the WDFW will not have access to critical harvest information, and federal enforcement money will no longer be available. The public record information the bill proposes to exempt from disclosure is very similar to other kinds of harvest information currently exempted from disclosure.

The bill moves the state along a path on which it is already headed and is a step in the right direction and necessary to continue momentum. The commercial crab fishery continues to have difficulties adjusting to the impact of the Rafeedie Decision. The federal government is prepared to provide funds that will remove one-third of the total crab fisheries effort in the state.

(Opposed) None.

**Persons Testifying:** (In support) Mike Cenci, Washington Department of Fish and Wildlife; Ray Toste, Washington Dungeness Crab Fisheries Association; and Dale Beasley, Columbia River Crab Fishers Association.

(Opposed) None.

**Persons Signed In To Testify But Not Testifying:** None.

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**HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT & AUDIT REVIEW**

**Majority Report:** Do pass as amended. Signed by 10 members: Representatives Linville, Chair; Ericks, Vice Chair; Skinner, Assistant Ranking Minority Member; Alexander, Blake, Chandler, Kretz, Lantz, Lias and Nelson.

**Staff:** Alicia Dunkin (786-7178).

**Summary of Recommendation of Committee On Appropriations Subcommittee on General Government & Audit Review Compared to Recommendation of Committee On Agriculture & Natural Resources:**

A null and void clause was added, making the bill null and void unless funded in the budget.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony:**

(In support) We support both aspects of the bill because we do both management of fish and wildlife and enforcement. We must adopt all federal regulations and collecting certain information about people's catch information from human observation, deck cameras, etc. may need to be confidential. It would be unfair for certain commercial interests to have their catch information made public, but we need access to the information to manage the fisheries. We receive federal funding for joint enforcement and need to offer the same protection of information than what the federal government requires. The license buy back portion of this bill is a technical amendment that we support and would position crab fishers to receive federal funds, if these funds were made available.

(Opposed) None.

**Persons Testifying:** Mike Cenci, Washington State Department of Fish and Wildlife.

**Persons Signed In To Testify But Not Testifying:** None.