
SENATE BILL 5404

State of Washington

61st Legislature

2009 Regular Session

By Senator Jacobsen; by request of Department of Fish and Wildlife

Read first time 01/21/09. Referred to Committee on Natural Resources, Ocean & Recreation.

1 AN ACT Relating to modernizing certain provisions in Title 77 RCW
2 regarding fish and wildlife; amending RCW 77.15.050, 77.15.700,
3 77.15.310, 77.15.320, 77.15.610, 77.32.470, 77.65.010, 77.65.370,
4 77.65.440, 77.15.510, 77.65.480, and 77.15.552; and repealing RCW
5 77.12.065.

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

7 **Sec. 1.** RCW 77.15.050 and 1998 c 190 s 6 are each amended to read
8 as follows:

9 (1) Unless the context clearly requires otherwise, as used in this
10 chapter, "conviction" means:

11 (a) A final conviction in a state or municipal court;

12 (b) A failure to appear at a hearing to contest an infraction or
13 criminal citation; or

14 (c) An unvacated forfeiture of bail paid as a final disposition for
15 an offense (~~or an unvacated forfeiture of bail or collateral deposited~~
16 ~~to secure the defendant's appearance in court)).~~

17 (2) A plea of guilty, or a finding of guilt for a violation of this
18 title or rule of the commission or director constitutes a conviction

1 regardless of whether the imposition of sentence is deferred or the
2 penalty is suspended.

3 **Sec. 2.** RCW 77.15.700 and 2007 c 163 s 2 are each amended to read
4 as follows:

5 (1) The department shall impose revocation and suspension of
6 privileges in the following circumstances:

7 ~~((1))~~ (a) Upon conviction, if directed by statute for an
8 offense~~((+))~~.

9 ~~((2))~~ (b) Upon conviction of a violation not involving commercial
10 fishing, if the department finds that actions of the defendant
11 demonstrated a willful or wanton disregard for conservation of fish or
12 wildlife. ~~((Such))~~ Suspension of privileges under this subsection may
13 be permanent. ~~((This subsection (2) does not apply to violations~~
14 ~~involving commercial fishing;~~

15 ~~(3))~~ (c) If a person is convicted twice within ten years for a
16 violation involving unlawful hunting, killing, or possessing big
17 game~~((, the department shall order))~~. Revocation and suspension ~~((of))~~
18 under this subsection must be ordered for all hunting privileges for
19 two years. ~~((RCW 77.12.722 or 77.16.050 as it existed before June 11,~~
20 ~~1998, may comprise one of the convictions constituting the basis for~~
21 ~~revocation and suspension under this subsection;~~

22 ~~(4)(a))~~ (d) If a person violates, three times or more in a ten-
23 year period, recreational hunting or fishing laws or rules for which
24 the person: (i) Is convicted of an offense((+)); (ii) has an
25 uncontested notice of infraction((+)); (iii) fails to appear at a
26 hearing to contest ((an)) a fish and wildlife infraction((+)); or (iv)
27 is found to have committed an infraction ~~((three times in ten years~~
28 ~~involving any violation of recreational hunting or fishing laws or~~
29 ~~rules, the department shall order a)).~~ Revocation and suspension under
30 this subsection must be ordered of all recreational hunting and fishing
31 privileges for two years.

32 ~~((b))~~ (2)(a) A violation punishable as an infraction counts
33 towards the revocation and suspension of recreational hunting and
34 fishing privileges ~~((only where))~~ under this section if that violation
35 is:

36 (i) Punishable as a crime on July 24, 2005, and is subsequently
37 decriminalized; or

1 (ii) One of the following violations, as they exist on July 24,
2 2005: RCW 77.15.160 (~~((1) or (2))~~); WAC 220-56-116; WAC 220-56-
3 315(11); or WAC 220-56-355 (1) through (4).

4 (~~((c))~~) (b) The commission may, by rule, designate (~~((additional))~~)
5 infractions that do not count towards the revocation and suspension of
6 recreational hunting and fishing privileges.

7 (~~((5))~~) (3) If either the deferred education licensee or the
8 required nondeferred accompanying person, hunting under the authority
9 of RCW 77.32.155(2), is convicted of a violation of this title, except
10 for a violation of RCW 77.15.400 (1) through (3), the department may
11 revoke all hunting licenses and tags and may order a suspension of
12 (~~((one))~~) either or both the deferred education licensee's and the
13 nondeferred accompanying person's hunting privileges for one year.

14 **Sec. 3.** RCW 77.15.310 and 2003 c 39 s 38 are each amended to read
15 as follows:

16 (1) A person is guilty of unlawful failure to use or maintain an
17 approved fish guard on a diversion device if the person owns, controls,
18 or operates a device used for diverting or conducting water from a
19 lake, river, or stream and:

20 (a) The device is not equipped with a fish guard, screen, or bypass
21 approved by the director as required by RCW (~~((77.55.040 or 77.55.320))~~)
22 77.57.010 or 77.57.070; or

23 (b) The person knowingly fails to maintain or operate an approved
24 fish guard, screen, or bypass so as to effectively screen or prevent
25 fish from entering the intake.

26 (2) Unlawful failure to use or maintain an approved fish guard,
27 screen, or bypass on a diversion device is a gross misdemeanor.
28 Following written notification to the person from the department that
29 there is a violation, each day that a diversion device is operated
30 without an approved or maintained fish guard, screen, or bypass is a
31 separate offense.

32 **Sec. 4.** RCW 77.15.320 and 2000 c 107 s 241 are each amended to
33 read as follows:

34 (1) A person is guilty of unlawful failure to provide, maintain, or
35 operate a fishway for dam or other obstruction if the person owns,

1 operates, or controls a dam or other obstruction to fish passage on a
2 river or stream and:

3 (a) The dam or obstruction is not provided with a durable and
4 efficient fishway approved by the director as required by RCW
5 (~~77.55.060~~) 77.57.030;

6 (b) Fails to maintain a fishway in efficient operating condition;
7 or

8 (c) Fails to continuously supply a fishway with a sufficient supply
9 of water to allow the free passage of fish.

10 (2) Unlawful failure to provide, maintain, or operate a fishway for
11 dam or other obstruction is a gross misdemeanor. Following written
12 notification to the person from the department that there is a
13 violation, each day of unlawful failure to provide, maintain, or
14 operate a fishway is a separate offense.

15 **Sec. 5.** RCW 77.15.610 and 1998 c 190 s 33 are each amended to read
16 as follows:

17 (1) A person who holds a fur buyer's license or taxidermy license
18 is guilty of unlawful use of a commercial wildlife license if the
19 person:

20 (a) Fails to have the license in possession while engaged in fur
21 buying or practicing taxidermy for commercial purposes; or

22 (b) Violates any rule of the department regarding reporting
23 requirements or the use, possession, display, or presentation of the
24 taxidermy or fur buyer's license.

25 (2) Unlawful use of a commercial wildlife license is a misdemeanor.

26 **Sec. 6.** RCW 77.32.470 and 2008 c 35 s 1 are each amended to read
27 as follows:

28 (1) A personal use saltwater, freshwater, combination, temporary,
29 or family fishing weekend license is required for all persons fifteen
30 years of age or older to fish for or possess fish taken for personal
31 use from state waters or offshore waters.

32 (2) The fees for annual personal use saltwater, freshwater, or
33 combination licenses are as follows:

34 (a) A combination license allows the holder to fish for or possess
35 fish, shellfish, and seaweed from state waters or offshore waters. The
36 fee for this license is thirty-six dollars for residents, seventy-two

1 dollars for nonresidents, and five dollars for youth. There is an
2 additional fifty-cent surcharge for this license, to be deposited in
3 the rockfish research account created in RCW 77.12.702.

4 (b) A saltwater license allows the holder to fish for or possess
5 fish taken from saltwater areas. The fee for this license is eighteen
6 dollars for residents, thirty-six dollars for nonresidents, and five
7 dollars for resident seniors. There is an additional fifty-cent
8 surcharge for this license, to be deposited in the rockfish research
9 account created in RCW 77.12.702.

10 (c) A freshwater license allows the holder to fish for, take, or
11 possess food fish or game fish species in all freshwater areas. The
12 fee for this license is twenty dollars for residents, forty dollars for
13 nonresidents, and five dollars for resident seniors.

14 (3)(a) A temporary combination fishing license is valid for one to
15 five consecutive days and allows the holder to fish for or possess
16 fish, shellfish, and seaweed taken from state waters or offshore
17 waters. The fee for this temporary fishing license is:

18 (i) One day - Seven dollars for residents and fourteen dollars for
19 nonresidents;

20 (ii) Two days - Ten dollars for residents and twenty dollars for
21 nonresidents;

22 (iii) Three days - Thirteen dollars for residents and twenty-six
23 dollars for nonresidents;

24 (iv) Four days - Fifteen dollars for residents and thirty dollars
25 for nonresidents; and

26 (v) Five days - Seventeen dollars for residents and thirty-four
27 dollars for nonresidents.

28 (b) The fee for a charter stamp is seven dollars for a one-day
29 temporary combination fishing license for residents and nonresidents
30 for use on a charter boat as defined in RCW 77.65.150.

31 (c) A transaction fee to support the automated licensing system
32 will be taken from the amounts set forth in this subsection for
33 temporary licenses.

34 (d) Except for active duty military personnel serving in any branch
35 of the United States armed forces, the temporary combination fishing
36 license is not valid on game fish species for an eight-consecutive-day
37 period beginning on the opening day of the lowland lake fishing season
38 as defined by rule of the commission.

1 (e) The temporary combination fishing license fee for active duty
2 military personnel serving in any branch of the United States armed
3 forces is the resident rate as set forth in (a) of this subsection.
4 Active duty military personnel must provide a valid military
5 identification card at the time of purchase of the temporary license to
6 qualify for the resident rate.

7 (f) There is an additional fifty-cent surcharge on the temporary
8 combination fishing license and the associated charter stamp, to be
9 deposited in the rockfish research account created in RCW 77.12.702.

10 (4) A family fishing weekend license allows for a maximum of six
11 anglers: One resident and five youth; two residents and four youth; or
12 one resident, one nonresident, and four youth. This license allows the
13 holders to fish for or possess fish taken from state waters or offshore
14 waters. The fee for this license is twenty dollars. This license is
15 only valid during periods as specified by rule of the department.

16 (5) The commission may adopt rules to create and sell combination
17 licenses for all hunting and fishing activities at or below a fee equal
18 to the total cost of the individual license contained within any
19 combination.

20 **Sec. 7.** RCW 77.65.010 and 2005 c 20 s 1 are each amended to read
21 as follows:

22 (1) Except as otherwise provided by this title, a person (~~may~~
23 ~~not~~) must have a license or permit issued by the director in order to
24 engage in any of the following activities (~~(without a license or permit~~
25 ~~issued by the director))~~):

26 (a) Commercially fish for or take food fish or shellfish;

27 (b) Deliver from a commercial fishing vessel food fish or shellfish
28 taken for commercial purposes in offshore waters. As used in this
29 subsection, "deliver" means arrival at a place or port, and includes
30 arrivals from offshore waters to waters within the state and arrivals
31 from state or offshore waters;

32 (c) Operate a charter boat or commercial fishing vessel engaged in
33 a fishery;

34 (d) Engage in processing or wholesaling food fish or shellfish; or

35 (e) Act as a food fish guide (~~(for salmon)~~) for personal use in
36 freshwater rivers and streams, (~~(other than that part of the Columbia~~

1 ~~river below the bridge at Longview))~~ except that a charter boat license
2 is required to operate a vessel from which a person may for a fee fish
3 for food fish in state waters listed in RCW 77.65.150(4)(b).

4 (2) No person may engage in the activities described in subsection
5 (1) of this section unless the licenses or permits required by this
6 title are in the person's possession, and the person is the named
7 license holder or an alternate operator designated on the license and
8 the person's license is not suspended.

9 (3) A valid Oregon license that is equivalent to a license under
10 this title is valid in the concurrent waters of the Columbia river if
11 the state of Oregon recognizes as valid the equivalent Washington
12 license. The director may identify by rule what Oregon licenses are
13 equivalent.

14 (4) No license or permit is required for the production or
15 harvesting of private sector cultured aquatic products as defined in
16 RCW 15.85.020 or for the delivery, processing, or wholesaling of such
17 aquatic products. However, if a means of identifying such products is
18 required by rules adopted under RCW 15.85.060, the exemption from
19 licensing or permit requirements established by this subsection applies
20 only if the aquatic products are identified in conformance with those
21 rules.

22 **Sec. 8.** RCW 77.65.370 and 1998 c 190 s 98 are each amended to read
23 as follows:

24 (1) A person shall not offer or perform the services of a
25 (~~professional salmon~~) food fish guide without a food fish guide
26 license in the taking of (~~salmon~~) food fish for personal use in
27 freshwater rivers and streams, (~~other than in that part of the~~
28 ~~Columbia river below the bridge at Longview, without a professional~~
29 ~~salmon guide license~~) except that a charter boat license is required
30 to operate a vessel from which a person may for a fee fish for food
31 fish in state waters listed in RCW 77.65.150(4)(b).

32 (2) Only an individual at least sixteen years of age may hold a
33 (~~professional salmon~~) food fish guide license. No individual may
34 hold more than one (~~professional salmon~~) food fish guide license.

35 **Sec. 9.** RCW 77.65.440 and 2000 c 107 s 55 are each amended to read
36 as follows:

1 The director shall issue the personal licenses listed in this
 2 section according to the requirements of this title. The licenses and
 3 their annual fees are:

Personal License	Annual Fee		Governing Section
	Resident	Nonresident	
(1) Alternate Operator	\$ 35	\$ 35	RCW 77.65.130
(2) Geoduck Diver	\$185	\$295	RCW 77.65.410
(3) ((Salmon)) <u>Food</u> <u>Fish Guide</u>	\$130	\$630	RCW 77.65.370
	(plus \$20)	(plus \$100)	

12 **Sec. 10.** RCW 77.15.510 and 2001 c 253 s 43 are each amended to
 13 read as follows:

14 (1) A person is guilty of ~~((commercial))~~ acting as a game fish
 15 ~~((guiding))~~ guide, food fish guide, or chartering without a license
 16 if:

17 (a) The person operates a charter boat and does not hold the
 18 charter boat license required for the food fish taken;

19 (b) The person acts as a ~~((professional salmon))~~ food fish guide
 20 and does not hold a ~~((professional salmon))~~ food fish guide license; or

21 (c) The person acts as a game fish guide and does not hold a game
 22 fish guide license.

23 (2) ~~((Commercial))~~ Acting without a game fish ~~((guiding or~~
 24 ~~chartering without a))~~ guide license, food fish guide license, or
 25 charter license is a gross misdemeanor.

26 **Sec. 11.** RCW 77.65.480 and 1991 sp.s. c 7 s 4 are each amended to
 27 read as follows:

28 (1) A taxidermy license allows the holder to practice taxidermy for
 29 ~~((profit))~~ commercial purposes, as that term is defined in RCW
 30 77.15.110. The fee for this license is one hundred eighty dollars.

31 (2) A fur dealer's license allows the holder to purchase, receive,
 32 or resell raw furs for ~~((profit))~~ commercial purposes, as that term is
 33 defined in RCW 77.15.110. The fee for this license is one hundred
 34 eighty dollars.

35 (3) A ~~((fishing))~~ game fish guide license allows the holder to
 36 offer or perform the services of a ~~((professional))~~ game fish guide in

1 the taking of game fish. The fee for this license is one hundred
2 eighty dollars for a resident and six hundred dollars for a
3 nonresident.

4 (4) A game farm license allows the holder to operate a game farm to
5 acquire, breed, grow, keep, and sell wildlife under conditions
6 prescribed by the rules adopted pursuant to this title. The fee for
7 this license is seventy-two dollars for the first year and forty-eight
8 dollars for each following year.

9 (5) A game fish stocking permit allows the holder to release game
10 fish into the waters of the state as prescribed by rule of the
11 commission. The fee for this permit is twenty-four dollars.

12 (6) A fishing or field trial permit allows the holder to promote,
13 conduct, hold, or sponsor a fishing or field trial contest in
14 accordance with rules of the commission. The fee for a fishing contest
15 permit is twenty-four dollars. The fee for a field trial contest
16 permit is twenty-four dollars.

17 (7)(a) An anadromous game fish buyer's license allows the holder to
18 purchase or sell steelhead trout and other anadromous game fish
19 harvested by Indian (~~fishermen~~) fishers lawfully exercising fishing
20 rights reserved by federal statute, treaty, or executive order, under
21 conditions prescribed by rule of the director. The fee for this
22 license is one hundred eighty dollars.

23 (b) An anadromous game fish buyer's license is not required for
24 those businesses that buy steelhead trout and other anadromous game
25 fish from Washington licensed game fish dealers and sell solely at
26 retail.

27 **Sec. 12.** RCW 77.15.552 and 2003 c 386 s 3 are each amended to read
28 as follows:

29 (1) If a person is convicted of two or more qualifying commercial
30 fishing violations within a three-year period, the person's commercial
31 fishing license privileges (~~(to participate in the commercial fishery~~
32 ~~to which the violations applied)) under chapter 77.65 RCW may be
33 suspended by the director for up to one year. A commercial (~~(fishery))~~
34 fishing license that is (~~(suspended under this section))~~ impacted by
35 this privilege suspension may not be transferred after the director
36 issues a notice of suspension, or used by an alternative operator or~~

1 transferred during the period of suspension, if the person who is the
2 subject of the suspension notice is the person who owns the commercial
3 fishery license.

4 (2) For the purposes of this section only, "qualifying commercial
5 fishing violation" means either:

6 (a) A conviction under RCW 77.15.500, 77.15.510, 77.15.520,
7 77.15.530, 77.15.550(1)(a), 77.15.570, 77.15.580, or 77.15.590;

8 (b) A gross misdemeanor or felony involving commercial fish
9 harvesting, buying, or selling that is unlawful under the terms of the
10 license, this title, or the rules issued pursuant to this title, if the
11 quantity of unlawfully harvested, possessed, bought, or sold fish,
12 other than shellfish, groundfish, or coastal pelagic species of
13 baitfish totals greater than six percent, by weight, of the harvest
14 available for inspection at the time of citation and the cumulative
15 value of the unlawfully harvested fish is more than two hundred fifty
16 dollars at the time of citation;

17 (c) A gross misdemeanor or felony involving commercial groundfish
18 or coastal pelagic baitfish harvest, buying, or selling that is
19 unlawful under the terms of the license, this title, or the rules
20 issued under this title, if: (i) The quantity of unlawfully harvested,
21 possessed, bought, or sold groundfish or coastal pelagic baitfish
22 totals greater than ten percent, by weight, of the harvest available
23 for inspection at the time of citation and has a cumulative value
24 greater than five hundred dollars; or (ii) the quantity, by weight, of
25 the unlawfully commercially harvested groundfish or coastal pelagic
26 baitfish is ten percent greater than the landing allowances provided
27 under rules adopted by the department for species categorized as over-
28 fished by the national marine fisheries service; or

29 (d) A gross misdemeanor or felony involving commercial shellfish
30 harvesting, buying, or selling that is unlawful under the terms of the
31 license, this title, or the rules issued pursuant to this title, if the
32 quantity of unlawfully harvested, possessed, bought, or sold shellfish:
33 (i) Totals greater than six percent of the harvest available for
34 inspection at the time of citation; and (ii) totals fifty or more
35 individual shellfish.

36 (3)(a) The director may refer a person convicted of one qualifying
37 commercial fishing violation to the license suspension review committee

1 if the director feels that the qualifying commercial fishing violation
2 was of a severe enough magnitude to justify suspension of the
3 individual's license renewal privileges.

4 (b) The director may refer any person convicted of one egregious
5 shellfish violation to the license suspension review committee.

6 (c) For the purposes of this section only, "egregious shellfish
7 violation" means a gross misdemeanor or felony involving commercial
8 shellfish harvesting, buying, or selling that is unlawful under the
9 terms of the license, this title, or the rules issued pursuant to this
10 title, if the quantity of unlawfully harvested, possessed, bought, or
11 sold shellfish: (i) Totals more than twenty percent of the harvest
12 available for inspection at the time of citation; (ii) totals five
13 hundred or more individual shellfish; and (iii) is valued at two
14 thousand five hundred dollars or more.

15 (4) A person who has a commercial fishing license suspended or
16 revoked under this section may file an appeal with the license
17 suspension review committee pursuant to RCW 77.15.554. An appeal must
18 be filed within thirty-one days of notice of license suspension or
19 revocation. If an appeal is filed, the suspension or revocation issued
20 by the department does not take effect until after the license
21 suspension review committee has delivered an opinion. If no appeal is
22 filed within thirty-one days of notice of license suspension or
23 revocation, the right to an appeal is considered waived. All
24 suspensions ordered under this section take effect either thirty-one
25 days following the conviction for the second qualifying commercial
26 fishing violation, or upon a decision pursuant to RCW 77.15.554,
27 whichever is later.

28 (5) A fishing privilege suspended under this section is in addition
29 to the statutory penalties assigned to the underlying crime.

30 (6) For the purposes of this section only, the burden is on the
31 state to show the dollar amount or the percent of a harvest that is
32 comprised of unlawfully harvested, bought, or sold individual fish or
33 shellfish.

34 NEW SECTION. **Sec. 13.** RCW 77.12.065 (Wildlife viewing tourism)
35 and 2003 c 183 s 1 are each repealed.

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