

# HOUSE BILL REPORT

## HB 1282

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**As Reported by House Committee On:**  
Agriculture & Natural Resources

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

**Brief Description:** Regarding issues that impact the department of fish and wildlife.

**Sponsors:** Representatives Blake, Van De Wege, Chandler, Kretz, Orcutt and Warnick; by request of Department of Fish and Wildlife.

**Brief History:**

**Committee Activity:**

Agriculture & Natural Resources: 1/26/11, 2/8/11 [DPS].

**Brief Summary of Substitute Bill**

- Makes changes regarding the chapter of law administered by the Washington Department of Fish and Wildlife relating to wildlife issues, wildlife-related commercial operations, fisheries issues, law enforcement, fires, definitions, and the delivery of crabs from out of state.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Blake, Chair; Stanford, Vice Chair; Chandler, Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Hinkle, Kretz, Lytton, Orcutt, Pettigrew, Rolfes and Van De Wege.

**Minority Report:** Do not pass. Signed by 1 member: Representative Dunshee.

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

**Background:**

Title 77 RCW constitutes the majority of the statutes that direct the functions and authorities of the Washington Department of Fish and Wildlife (WDFW). There are a myriad of legal concepts within the 25 chapters that constitute Title 77. These include how and when a

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citizen can be convicted of a fish or wildlife crime, under what conditions the WDFW can issue a license to engage in fish and wildlife related activities, and how the WDFW manages the land and species under its jurisdiction.

#### Wildlife Issues.

If a hunter shoots another person or domestic livestock, the Director of the WDFW (Director) must revoke the hunting privileges of the shooter for three years. The privilege revocation must be extended to 10 years if the shooting was done negligently, recklessly, or intentionally.

The Fish and Wildlife Reward Account (Reward Account) is created as a non-appropriated account in the state treasury. The Reward Account receives the revenues generated from the assessment of criminal wildlife penalty assessments for the unlawful hunting of big game, criminal wildlife penalties, and any money or property donated to the fund. The Director may only authorize expenditures from the Reward Account for wildlife enforcement uses, including the investigation and prosecution of fish and wildlife offenses and providing rewards to informants.

Criminal wildlife penalty assessments are collected from individuals convicted of either the first or second degree variety of unlawful big game hunting. The assessments range between \$8,000 and \$24,000, depending on the species of big game killed.

The WDFW may apply to the Department of Health (DOH) for a registration that allows the WDFW to use controlled substances in chemical capture programs. There is no requirement that the WDFW be provided with the registration.

#### Wildlife-related Commercial Operations.

Many of the crimes enforced by the WDFW require that the individual charged be shown to be acting for commercial purposes. An individual is considered to be acting for commercial purposes if he or she engages in conduct that relates to commerce in fish and wildlife. This may include taking, delivering, selling, buying, or trading fish or wildlife when there is a present or future exchange of value. Evidence that a person acts for commercial purposes includes using gear typical in commercial fisheries, possessing more than three times his or her personal limit, delivering fish or wildlife to a wholesaler, taking fish or shellfish using a vessel designated for a commercial fishery, holding a commercial fishery license, dealing in raw fur, or performing taxidermy services for a fee.

All taxidermists are required to maintain a ledger consistent with rules developed by the Fish and Wildlife Commission (Commission). Failing to maintain a ledger is a misdemeanor.

#### Fisheries Issues.

The holder of a commercial fishing or charter boat license may designate up to two individuals as alternate operators of their vessels. An alternate operator is a person other than the license holder who is permitted to operate the vessel associated with the underlying license. Alternate operators must purchase a \$22 license in order to be designated.

A \$100 surcharge is required with the purchase of a commercial salmon fishery license, delivery license, or charter license. The money collected by the surcharge must be used exclusively for salmon enhancement projects undertaken by regional fisheries enhancement groups.

#### WDFW Law Enforcement.

The three state agencies generally considered to be responsible for the enforcement of the state's natural resources laws are the State Parks and Recreation Commission (Parks Commission), the Department of Natural Resources (DNR), and the WDFW. Each agency is directed to enforce the statutory provisions related to their own agency.

Of the three agencies, only the enforcement officers of the WDFW are general authority peace officers. This status authorizes the WDFW to enforce all criminal laws in the state. By contrast, the DNR and the Parks Commission employ limited authority peace officers. These are officers of an agency that have as a job duty the apprehension or detection of persons committing infractions or violating criminal laws relating to limited subject areas.

In addition to the WDFW law enforcement officers, Title 77 may be enforced by ex-officio officers. These are commissioned general law enforcement officers from cities, counties, the state, or the federal government. The term also includes enforcement officers of the DNR and the Parks Commission when operating on DNR-managed lands or a state park and the enforcement personnel of the United States Fish and Wildlife Service, National Marine Fisheries Service, and United States Forest Service.

The Interlocal Cooperation Act allows one or more public entities to enter into an agreement allowing the entities to exercise jointly any power, privilege, or authority conferred upon the signatory agencies. The authority to enter into these agreements is available to any agency of Washington, or any federal, tribal, local, or out-of-state government.

Prior to the sharing of authorities, the public entities must enter into a written agreement. This agreement must outline the duration of the agreement, its purpose or purposes, how the undertaking will be financed, how the agreement can be terminated, who will administer the joint authorities, and the precise nature of any new entity created by the agreement.

#### Resident and Non-resident Status.

Many licenses issued by the WDFW for hunting and fishing are priced at different levels depending on whether or not the purchaser is a Washington resident. To qualify as a resident, a person must have maintained a permanent place of abode in Washington for the 90 days immediately preceding license application and establish a formal intent to continue residing in Washington. The person must also not be licensed to fish or hunt as a resident of another state.

A person under the age of 18 who lives in another state can qualify as a Washington resident if he or she has a parent who qualifies as a Washington resident and is not licensed as a resident in another state.

### Out-of-state Crab.

Crabs that are harvested commercially from out-of-state waters may only be delivered into Washington if they were harvested by fishers possessing a license issued by the WDFW. The Director has the authority to allow, on a case-by-case basis, crabs harvested by Oregon or California-licensed crabbers, but only if it is determined that allowing the out-of-state fishers to deliver their catch into Washington is in the best interest of the crab processing industry. This can be demonstrated through the request for out-of-state crabs by at least three crab processors. Out-of-state crabs allowed to be delivered to Washington must be limited to deliveries occurring between December 1 through February 15 of any given year.

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### **Summary of Substitute Bill:**

#### Wildlife Issues.

Feeding predatory animals is made unlawful. A civil infraction is created for any person whom a WDFW enforcement officer or local animal control authority has probable cause to believe is *negligently* feeding, attempting to feed, or attracting bears, cougars, or wolves by placing food, food waste, or any other substance in a manner that may cause a public safety risk. Similar activity done *intentionally* is a misdemeanor. It is also a misdemeanor to fail to correct an issue within 24 hours giving rise to a negligent civil infraction.

The prohibition on animal feeding is not enforceable against a person engaged in forest practices, hunting, trapping, or farming using generally accepted farming practices. Also exempt are lawful zoos, waste management facilities, and WDFW personnel capturing wildlife to address conflict issues.

The three-year revocation of a hunting license for the shooting of a person or livestock while hunting is expanded to include not only shooting that results from the discharge of a firearm, but also the discharge of bows and crossbows. The 10-year license revocation for reckless, intentional, or negligent shooting of another person is changed. Instead of a shooting having to be reckless, intentional, or negligent, the WDFW must invoke a 10-year license suspension anytime a person is killed by a hunter. This suspension must occur regardless of the intent or state of mind of the shooter. However, the shooting of livestock is removed from being a possible reason for a 10-year license suspension.

Criminal wildlife penalty assessments and two-year license revocations are created for a person convicted of the unlawful taking of protected fish or wildlife. In addition to the underlying criminal sanctions, an additional \$2,000 assessment is required if certain species are killed. The species triggering the \$2,000 assessment are: ferruginous hawk, common loon, bald eagle, and peregrine falcon. The assessment money is dedicated to the Reward Account.

The ability of the WDFW to apply to the DOH for the ability to purchase controlled substances for chemical capture programs is expanded to include the use of controlled

substances to euthanize injured, sick, or unwanted wildlife. The ability for the DOH to deny the WDFW a limited registration to use controlled substances is removed. The DOH must issue the limited registration to the WDFW.

#### Wildlife-related Commercial Operations.

The list of specific activities that may be used as evidence to show that someone is acting for commercial purposes is expanded to include the act of packing, cutting, processing, or storing wildlife meat for a fee or for the exchange of goods and services. A definition of "wildlife meat cutter" is provided to describe a person who engages in this business activity.

A new misdemeanor is created for taxidermists, fur dealers, and wildlife meat cutters who fail to maintain required business records for each wildlife carcass or part received while acting for commercial purposes and holding, possessing, or storing wildlife. The record of receipt of wildlife received must be maintained in English for three years at the location where the wildlife is stored or at the principle place of business.

The contents of the records that must be maintained are to be outlined by the Commission in rule. At a minimum, these rules must require maintained records to include client's names and addresses, the date of receipt, and the number and species of wildlife parts received.

Taxidermists are excluded from the scope of an existing misdemeanor relating to the maintenance of a taxidermist ledger.

The definition of game farm is expanded to include the confinement, propagation, hatching, and feeding of wildlife being raised for commercial purposes.

#### Fisheries Issues.

The ability for a charter boat license holder to designate up to two alternate operators for the license is removed. However, a charter boat license holder may operate a vessel that is designated under a commercial fishing license even if the charter boat operator is not the holder of the underlying fishing license.

The WDFW is authorized to use up to 20 percent of the money dedicated to regional fisheries enhancement group projects raised through a surcharge on commercial salmon fishing, delivery, and charter licenses to directly provide guidance to regional fisheries enhancement groups. This guidance includes professional, administrative, and technical training, project proposal compatibility review, contract and fund management, and training in budgeting and accounting principles.

#### WDFW Law Enforcement.

The specificity as to training requirements for WDFW law enforcement officers is removed. Also removed is the concept of an ex-officio fish and wildlife officer. Instead, the Director may use the Interlocal Cooperation Act to contract with other law enforcement agencies to enforce the laws and rules administered by the WDFW. Any liability arising from the actions of the contracted law enforcement agency belongs to that agency and not the WDFW.

### Fires on WDFW-managed Land.

A gross misdemeanor is created for the willful start of a fire on lands owned or controlled by the WDFW other than campfires, fires in stoves, lanterns, barbeques, or fires used by public entities to manage wildfires. The scope of permissible campfires is to be determined by rule of the Commission.

Any person who negligently starts a fire, or is responsible for allowing fire to spread, on WDFW-controlled lands is made liable for all expenses related to fighting the fire, investigation of the fire's source, and pursuing litigation that is incurred by the state, a municipality, or any United States fire protection agency. The entity incurring the reasonable expense is empowered to place a lien on property owned by the responsible party.

### Resident and Non-resident Status.

The definition of "resident" for the purposes of hunting and fishing licenses is amended to add specificity as to how one can demonstrate that he or she has a permanent place of abode in Washington and has intent to remain a resident of Washington. A permanent place of abode can be demonstrated through the use of a Washington address for tax purposes, being a registered voter, using Washington for the state of residence for the purposes of holding public office, and being the custodial parent of a child in a Washington school. Intent to remain a resident of Washington can be shown by the possession of a Washington driver's license, a state-issued identification card, or the ownership of a motor vehicle licensed in Washington.

Members of the United States Armed Forces and their spouses can also demonstrate resident status. Military personnel temporarily stationed in Washington can claim residency by providing a copy of military orders showing the temporary station. Permanently-stationed military personnel must show an official document listing Washington as the state of legal residence.

The existing crime of unlawful purchase or use of a license in the second degree is expanded to include the act of purchasing a Washington resident license from the WDFW while holding a resident license from another state or country.

### Out-of-state Crab.

Oregon-licensed Dungeness crab fishers are permitted to deliver their harvest to Washington-based crab processors. The limitations on delivery of crabs by California-licensed fishers to Washington processors is maintained.

### **Substitute Bill Compared to Original Bill:**

The substitute bill: (1) removes swans from the criminal wildlife penalty assessments; (2) creates a reasonable person standard to judge instances when a person uses a firearm in a manner that may cause injury to others or to livestock; (3) allows a Washington seafood processor to accept crabs harvested by an Oregon-licensed fisher; (4) specifies that garbage

in a can is not feeding wildlife; and (5) allows WDFW employees to use food to attract animals for control purposes.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) The WDFW has a diverse constituency base of hunters and fishers. Fish and wildlife activities are heavily regulated and thus the regulatory changes to address these issues are often complicated. In the 1990s, two agencies were merged into the current agency structure. There are some remaining issues in state law that do not accurately reflect the existing agency merger.

The proposal regarding fire management brings the WDFW in line with the authority of the DNR. The criminal assessments extend the same protection to protected species that are afforded to big game trophy animals. The hunting license revocation is a civil action and not a criminal action. The provision regarding the feeding of predators is particularly important because habituated bears can be very dangerous.

(Opposed) None.

**Persons Testifying:** Bruce Bjork, Washington Department of Fish and Wildlife; and Ed Owens, Hunters Heritage Council and Coalition of Coastal Fisheries.

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