

HOUSE BILL REPORT

HB 2364

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to fish and wildlife enforcement.

Brief Description: Regarding enforcement of fish and wildlife violations.

Sponsors: Representatives Blake, Chandler, Dunshee, Armstrong, Hinkle, Orcutt, Lytton, Van De Wege, Kretz, Wilcox, Tharinger and McCune; by request of Department of Fish and Wildlife.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/24/12, 1/31/12 [DP].

Brief Summary of Bill

- Makes a number of changes related to the enforcement policies of the Washington Department of Fish and Wildlife (WDFW) and the crimes primarily enforced by the WDFW.
- Creates new fish and wildlife related crimes, decriminalizes certain acts, provides new penalties for existing crimes, and changes details for certain crimes.
- Provides new direction to the WDFW regarding seizure and forfeiture of property.
- Provides new definitions for existing terms.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass. Signed by 12 members: Representatives Blake, Chair; Chandler, Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Dunshee, Finn, Hinkle, Kretz, Lytton, Orcutt, Pettigrew and Van De Wege.

Staff: Jason Callahan (786-7117).

Background:

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.

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

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 enforcement of infractions or criminal laws relating to limited subject areas.

In addition to the WDFW law enforcement officers, Title 77 RCW 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 the state park and 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 entity 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 in these agreements is available to any agency of Washington, federal, tribal, or 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.

Summary of Bill:

New Crimes.

A collection of new crimes are created. Most of the new crimes are exclusive to fish and wildlife issues. However, one is applicable to all law enforcement. This general new crime is the misdemeanor of failing to comply with orders from a peace officer to identify one's self and provide one's address upon being detained for suspicion of a civil infraction.

Another new crime is the unlawful hunting on, or retrieving wildlife from, the property of another. This new crime, prosecutable as a misdemeanor, applies if a person knowingly

enters onto or remains unlawfully on the premises of another for the purpose of hunting or retrieving hunted wildlife. A person cited for this violation may use a defense that the premises in question was open to the public when the hunting occurred, that the person reasonably believed the landowner would have allowed the access, or the person reasonably believed that the lands in question were public lands. In addition to prosecution for a misdemeanor, a person convicted of this new crime faces license revocation and the suspension of hunting privileges for two years.

The new crime of unlawful destruction of the eggs or nests of wild birds is created. This misdemeanor can be prosecuted if a person maliciously harms the eggs or nest of a wild bird within five years of being found liable for a civil infraction of the same act. The act that triggers this new crime is removed from the elements of a similar crime: the unlawful hunting of wild birds.

New Penalties for Existing Crimes.

Specific existing crimes related to fish and wildlife are added to other non-fish and wildlife crimes on the ranked list of seriousness levels for felonious acts. By adding crimes to this list, they become part of the standard sentencing guidelines used by judges upon conviction.

The following is added to the list of crimes with a seriousness level III ranking:

- unlawful taking of endangered fish or wildlife; and
- unlawful trafficking in fish, shellfish, or wildlife in the first degree.

The following is added to the list of crimes with a seriousness level II ranking:

- commercial fishing without a license;
- engaging in unlicensed fish dealing activity;
- unlawful participation of non-Indians in an Indian fishery;
- unlawful purchase or use of a license; and
- unlawful trafficking in fish, shellfish, or wildlife in the second degree.

The following is added to the list of crimes with a seriousness level I ranking:

- spotlighting big game;
- suspension of Washington Department of Fish and Wildlife (WDFW) privileges;
- unlawful fish and shellfish accounting;
- unlawful release of deleterious exotic wildlife;
- unlawful use of a net to take fish;
- unlawful use of prohibited aquatic animal species; and
- violating commercial fishing areas or times.

Criminal wildlife penalty assessments 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, peregrine falcon, and golden eagle. The assessment must be doubled if the person kills one of the identified

species within five years of conviction of another significant wildlife-related crime or if the animal was killed with the intent of deriving economic profit. The assessment money is dedicated to the Fish and Wildlife Enforcement Reward Account.

Decriminalization of Existing Crimes.

The penalties for certain acts are changed from a criminal act to a civil infraction. In most instances, criminal sanctions still apply for more egregious violations while the civil penalty applies to acts lesser in scope. In total, more than 15 acts are changed from criminal to civil. These include the following:

- wasting fish and wildlife valued at less than \$250;
- failing to have a fishing license on a person when one is owned;
- taking seaweed unlawfully, but having less than double the daily personal collection limit;
- maliciously taking the eggs of a protected bird;
- attempting, unsuccessfully, to hunt wildlife that is not classified as game;
- failing to report trapping activity;
- posting "no hunting" signs on property not owned by the poster;
- violating the terms of scientific collection permits; and
- holding a hunting or fishing contest using live wildlife.

Corresponding changes are made to the relevant criminal statutes to reflect the civil nature of certain acts. This includes the revocation of four statutes.

Changing Details of Existing Crimes.

The crime of unlawful use of a dog is expanded to include using a dog to harass, kill, or attack wildlife (in addition to pursuing). The species protected from unlawful dog use is expanded from just deer and elk to include moose, caribou, and mountain sheep. The WDFW is also provided with the authority to kill a dog found being used in the underlying criminal act.

For the crime of waste of fish or wildlife, the elements do not change; however, the list of acts that serve as prima facie evidence of the crime is expanded to include abandoning an animal at a meat processor.

When the crime of unlawful trafficking in fish, shellfish, or wildlife is prosecuted, each individual transaction of the defendant may be aggregated if the acts represent a common scheme or plan. The sum of the aggregation may result in a higher charging level. In addition, the penalty for an offense in the second degree is changed from a gross misdemeanor to a class C felony and the penalty for an offense in the first degree is changed from a class C felony to a class B felony.

A new act is added to the crime of unlawful recreational fishing in the first degree. The new act, which can trigger prosecution, is possession of a salmon or steelhead during a closed season. The same crime in the second degree can be prosecuted if a person pursues fish without first obtaining the proper license and catch reporting documentation.

The crime of unlawful possession of a loaded firearm in a motor vehicle is changed to limit the triggering firearm possession to only rifles and shotguns.

The crime of unlawful use of fish buying and dealing licenses is rebranded as unlawful fish and shellfish catch accounting. In addition to the new name, a new act is added to the list of prosecutable acts. The new act is the failure to sign a fish receiving ticket or failure to provide the required information on the ticket.

A new prosecutable behavior is added for the crime of the unlawful purchase or use of a license. The new prosecutable behavior is the holding of an resident license issued by the WDFW while also holding a resident license from another state. This crime is also expanded beyond just licenses issued by the WDFW to include tags, permits, and other permissions.

Laws protecting orcas from interference are changed. The penalty, a civil infraction, may be pursued if a person approaches within 200 yards of a member of the southern resident orca pod in a vessel, positions a vessel within 400 yards of the path of an orca, feeds an orca, or fails to disengage a vessel's transmission when within 200 yards of an orca. Exemptions are included for lawful vessel operations without triggering the infraction. The exemptions may be used as affirmative defenses provable by the preponderance of the evidence.

Seizure and Forfeiture.

The process for disposing of forfeited, illegally harvested fish and wildlife is changed. Upon the seizure of commercially harvested fish and shellfish, a fish and wildlife officer may sell the product to a wholesale buyer and deposit the proceeds in the Fish and Wildlife Enforcement Rewards Account. Seized recreationally caught animals may be donated to a qualifying charitable organization.

Seized fish and wildlife is forfeited to the state upon conviction or any other criminal court outcome that allows the defendant to voluntarily continue or dismiss a case according to specific terms or conditions. Upon forfeiture, the WDFW may retain the fish and wildlife for official use, release the property to another law enforcement agency, donate the property, or sell the property and deposit the proceeds into the Fish and Wildlife Enforcement Rewards Account.

If a court outcome does not allow seized fish and wildlife to be forfeited to the state, then the WDFW must either return the seized fish or wildlife or return the value of the fish or wildlife if it has been donated or sold.

New and Changing Definitions.

The definition of an ex officio fish and wildlife officer is expanding, thereby adding new options for satisfying the requirements for becoming an ex officio officer for the purposes of enforcing fish and wildlife laws. In addition to being a commissioned general law enforcement officer, a person can become an ex officio officer by:

- being a limited authority officer with another state or federal agency that is operating under a mutual law enforcement assistance agreement with the WDFW;
- being a qualified fish and wildlife officer from another state if the other state's agency is operating under a mutual law enforcement assistance agreement with the WDFW;
- or
- being a tribal police officer in Washington who successfully meets the state's requirements for law enforcement certification if there is a mutual law enforcement assistance agreement with the WDFW and the employing tribe and the tribe's law enforcement meets the state's requirements for general authority law enforcement status.

The definition of game farm is expanded from properties where wildlife is held and raised for commercial purposes to include properties that also confine, propagate, hatch, or feed wildlife. Criminal and civil prohibitions related to game farms are expanded by reference to properties satisfying the expanded definition. Bullfrogs are removed from the definition of "wild animal."

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 in Washington, using Washington for the state of residence for the purposes of holding public office, or being the custodial parent of a child attending school in Washington. 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 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 definition of "acting for commercial purposes" is expanded to include wildlife meat preparation done for a fee. The definition is limited for fur dealers. Fur dealers only come under the definition if their acts are done in exchange for compensation. The definition change affects many of the crimes enforced by the WDFW that require the individual charged be shown to be acting for commercial purposes.

Other Changes.

The age above which fish and wildlife officers may require a person to display a driver's license or other identification is decreased from 18 years old to 16 years old. In addition, a fish and wildlife officer may request identification documents from any person over the age of 18, not just those who purchased a hunting or fishing license over the Internet.

The requirements for serving as a fish and wildlife officer are amended to be in line with other general law enforcement personnel certification requirements.

The ability for the WDFW to revoke a license and suspend hunting and fishing privileges is expanded from only occurring upon conviction to include also the failure of the defendant to appear at a hearing or instances when the defendant faces an unvacated fine. This authority is also expanded to include final disposition of civil infractions. Appeal procedures are added for a person facing a license revocation or a privilege suspension.

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 which 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. In addition to 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.

Appropriation: None.

Fiscal Note: Available.

Effective Date: 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 ranking of 15 fish and wildlife-related felonies on the standard sentencing grid allows judges to utilize the sentencing grid as appropriate so that the penalty reflects the seriousness of the crime. The 16 current crimes are being turned into civil infractions because new proposed court rules will make it very difficult to prosecute misdemeanors by requiring some level of adjudication in lieu of the current practice of relying on bail forfeitures for conviction. Allowing enforcement officers from other states to serve as ex officio enforcement officers in Washington will allow for more complete and standardized enforcement along Washington's borders.

It is important to private landowners to discourage trespass by hunters who may enter private property in the pursuit of game. It is also helpful for ranchers to make it easier to bring changes when a misguided hunter kills a person's livestock instead of wildlife. The current protections against both of these acts are insufficient to defer the behavior.

(Opposed) None.

Persons Testifying: Bruce Bjork, Department of Fish and Wildlife; Tom Davis, Washington Farm Bureau; and Jack Field, Washington Cattlemen's Association.

Persons Signed In To Testify But Not Testifying: None.