

SENATE BILL REPORT

SB 5369

As Reported by Senate Committee On:
Natural Resources & Marine Waters, February 7, 2011

Title: An act relating to commercial shellfish enforcement.

Brief Description: Regarding commercial shellfish enforcement.

Sponsors: Senators Regala, Swecker, Fraser, Morton, Ranker, Hargrove and Shin; by request of Department of Health.

Brief History:

Committee Activity: Natural Resources & Marine Waters: 1/31/11, 2/07/11 [DPS].

SENATE COMMITTEE ON NATURAL RESOURCES & MARINE WATERS

Majority Report: That Substitute Senate Bill No. 5369 be substituted therefor, and the substitute bill do pass.

Signed by Senators Ranker, Chair; Regala, Vice Chair; Morton, Ranking Minority Member; Fraser, Hargrove, Stevens and Swecker.

Staff: Curt Gavigan (786-7437)

Background: The Legislature has directed the Department of Health (DOH) to protect public health by ensuring the sanitary control of shellfish. The existing statutory scheme provides DOH with broad authority to adopt requirements to ensure shellfish are harvested, processed, and distributed in a safe and sanitary manner.

Participation in the National Shellfish Sanitation Program (NSSP). Washington participates in the NSSP, which is a cooperative program between states and the federal government for the sanitary control of shellfish. The stated purpose of the NSSP is to promote and improve the sanitation of shellfish moving in interstate commerce through uniformity of state shellfish programs and regulations.

Inspection and Certification of Commercial Shellfish Activities. In addition to DOH's broad rulemaking authority, statute provides several specific mechanisms for the regulation of commercial shellfish harvest and operations including:

- a certification requirement for shellfish to indicate that they meet DOH requirements, which is known as a certificate of compliance;

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.

- licensing and certification requirements for shellfish growing areas, and culling, shucking, and packing activities; and
- mandatory inspections, water quality monitoring, and biotoxin testing.

Penalties for Commercial Shellfish Violations. DOH may also deny, revoke, suspend, or modify commercial shellfish licenses or other approvals where it determines a violation has occurred. A person whose commercial shellfish privileges have been suspended may not participate in a shellfish operation or the harvesting, shucking, or packing of commercial shellfish.

Additionally, a person violating commercial shellfish requirements is subject to a gross misdemeanor and a civil penalty of up to \$500 per day.

Summary of Bill (Recommended Substitute): Expands Prohibitions on Commercial Shellfish Activity When a Certificate of Approval is Under Suspension. In addition to existing prohibitions, a person or entity whose license or certificate of approval has been denied, revoked, or suspended as a result of violations may not participate in commercial shellfish activities including the retail sale, brokering, or purchase for resale of shellfish; or engaging in any activity associated with selling or offering to sell shellfish.

A person violating these prohibitions is subject to a class C felony, and suspension of privileges for a minimum of five years.

Prohibits Harassing or Threatening Employees of the Department of Health. DOH may deny, revoke, or suspend a person's license or certificate of approval for a DOH employee performing his or her duties.

Aligns Statutes with the NSSP. Language referencing a certificate of compliance demonstrating that shellfish meet state sanitary requirements is changed to approved shellfish tag, which is a term used in the NSSP and DOH rule. Also, DOH must consider the most recent version on the NSSP model ordinance when adopting rules relating to shellfish sanitation.

Makes Other Changes. The act makes other modifications, such as:

- specifying that shellfish tags or labels must be affixed to each container of shellfish, and recognizes bulk tagging as authorized under the NSSP;
- providing that DOH or Fish and Wildlife may immediately seize containers not affixed with a shellfish tag;
- removing language specifying that shellfish be seized immediately when a shellfish grower or processor does not display a certificate of approval; and
- making technical changes to and reorganizing language.

EFFECT OF CHANGES MADE BY NATURAL RESOURCES & MARINE WATERS COMMITTEE (Recommended Substitute): The recommended substitute bill:

- modifies several definitions, including for person, shellstock, and approved shellfish tag;

- reorganizes and provides additional specificity regarding shellfish tagging requirements, including recognizing bulk tagging as allowed under the National Shellfish Sanitation Program;
- specifies that removing shellfish for bait or seed from an approved shellfish growing areas is authorized;
- replaces language prohibiting interference with the regulatory authority's performance of duties with language prohibiting harassing or threatening an authorized representative of the Department of Health;
- removes language specifying that shellfish be seized immediately when a shellfish grower or processor does not display a certificate of approval; and
- makes technical changes.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: Shellfish are key to Washington's economy, and problems with shellfish present both public health and economic dangers. The industry is very responsible, but a few bad actors place everyone in jeopardy. This bill closes a loophole that makes it difficult to stop those with a suspended license from still selling shellfish. It also recognizes the state's participation in a federal-state partnership to ensure safe interstate commerce for shellfish. Industry and the agencies have worked closely to develop the language.

Persons Testifying: PRO: Mike Cenci, Department of Fish and Wildlife; Maryanne Guichard, DOH; Jim Jesernig, Pacific Coast Shellfish Growers Assn.