

SENATE BILL REPORT

SB 6135

As Reported by Senate Committee On:
Energy, Natural Resources & Marine Waters, February 2, 2012

Title: An act relating to fish and wildlife enforcement.

Brief Description: Regarding enforcement of fish and wildlife violations.

Sponsors: Senators Hargrove, Swecker, Rolfes, Delvin, Regala, Ranker, Shin and Fraser; by request of Department of Fish and Wildlife.

Brief History:

Committee Activity: Energy, Natural Resources & Marine Waters: 1/26/12, 2/02/12 [DPS].

Brief Summary of Substitute 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 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 WDFW regarding seizure and forfeiture of property.
- Provides new definitions for existing terms.

SENATE COMMITTEE ON ENERGY, NATURAL RESOURCES & MARINE WATERS

Majority Report: That Substitute Senate Bill No. 6135 be substituted therefor, and the substitute bill do pass.

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

Staff: Angeline Thomas (786-7470)

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.

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 26 chapters that constitute Title 77. These include how and when a citizen may be convicted of a fish or wildlife crime, under what conditions WDFW can issue a license to engage in fish and wildlife related activities, and how WDFW manages the land and species under its jurisdiction.

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 WDFW. Each agency is directed to enforce the statutory provisions related to its own agency.

Of the three agencies, only the enforcement officers of WDFW are general authority peace officers. This status authorizes WDFW to enforce all criminal laws in the state. By contrast, DNR and the Parks Commission employ limited authority peace officers. These are officers of an agency whose job it is to apprehend or detect persons committing infractions or violating criminal laws relating to limited subject areas.

In addition to 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 includes the enforcement personnel of the United States Fish and Wildlife Service, National Marine Fisheries Service, United States Forest Service, and enforcement officers of DNR and the Parks Commission when they are on DNR-managed lands or a state park.

WDFW Crimes in the Courts. Under the Sentencing Reform Act, crimes are ranked and courts use the Sentencing Grid to determine the sentencing range for each crime based on the crime's seriousness level and the defendant's prior felonies. The sentencing grid ranks seriousness levels between one – the least serious – and 15 – the most serious. All WDFW felonies are unranked class C felonies; this means that they are not included in the sentencing grid. An unranked class C felony carries a possible jail term of 0 to 365 days.

Bail forfeiture or the payment of a fine has been used as a final disposition in criminal matters and is common for fish and wildlife crimes. Under this system, if a defendant fails to appear for trial, bail is forfeited and the case is resolved. However, beginning July 1, 2012, a bail forfeitures is no longer considered a final disposition unless the offender also enters a guilty plea or is found guilty.

Currently, certain fish and wildlife crimes are required to be charged as a separate offense prohibiting the value of multiple animals or animal parts to be aggregated, or added together, to secure a higher charge.

Resident and Non-resident Status. Many licenses issued by 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.

Additionally, a person under the age of 18 who lives in another state can qualify as a Washington resident if the minor has a parent who qualifies as a Washington resident and the minor is not licensed as a resident in another state.

Under current law, it is unlawful to purchase or use a license if one has used false information to do so.

Resident Orca Whales. In 2011 National Oceanic and Atmospheric Administration Fisheries Service adopted new regulations under the Marine Mammal Protection Act and Endangered Species Act to protect all killer whales in inland waters of Washington. These regulations prohibit positioning a vessel within 400 yards of the path of a comming whaled and requires vessels to stay at least 200 yards away from any killer whale.

State law currently prohibits approaching or causing a vessel to come within 300 feet, 100 yards, of a southern resident orca.

Summary of Bill (Recommended Substitute): WDFW Law Enforcement. *Peace Officers Given Authority to Briefly Detain a Person Being Issued a Notice of Infraction (NOI).* Allows peace officers, when issuing an NOI, to detain a person long enough to identify the person, check for outstanding warrants, and complete and issue NOI. Also requires the person receiving NOI to provide the officer with his or her name, address, and date of birth, including reasonable identification upon officer request. Failure to identify oneself is a misdemeanor.

Ex Officio Officers Defined and Given Authority to Check Licenses and Equipment. 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 may 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 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 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 WDFW and the employing tribe and the tribe's law enforcement meets the state's requirements for general authority law enforcement status.

Additionally, ex officio officers, such as park rangers and DNR officers, have authority to temporarily stop people engaged in fishing, harvesting, or hunting activity to check for valid licenses, tags, permits, stamps, catch record cards, and to inspect people's fish, shellfish, seaweed, wildlife, equipment, and watercraft for compliance.

Minimum Qualifications for WDFW Officers Defined. WDFW officers must pass a psychological and polygraph exam.

WDFW Crimes in the Courts. *The Sentencing Reform Act is Amended to Rank Certain WDFW Felonies.* Certain WDFW felonies are ranked with a seriousness level between one and three. The grid shows the minimum and maximum jail or prison time for the crime as well as the mid-point of that range.

The following is added to the list of crimes with a ranked seriousness level of three:

- 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 ranked seriousness level of two:

- 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 ranked seriousness level of one:

- spotlighting big game;
- suspension of 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.

Activities not Involving High Stakes Resources are Decriminalized. Fifteen new infractions are added to the current three based on activities that do not involve protected or endangered species, big game, or other high stakes resources. Examples of new infractions include:

- 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.

The Definition of Conviction is Clarified, and Other Statutes are Amended to Reflect the Change. In order to reflect a recent court decision, the definition of “conviction” is changed from including unvacated paid bail forfeitures to final conviction.

Penalties for Unlawful Trafficking are Strengthened. Separate counts of unlawful trafficking transactions may be aggregated under one count if those transactions are part of a common

scheme or plan. First and second degree unlawful trafficking are ranked as class B and C felonies, respectively.

Seizure and Forfeiture. *When WDFW Can Seize Unlawfully Taken Fish And Wildlife Amended.* WDFW is allowed to seize fish, shellfish, or wildlife unlawfully taken to be forfeited to the state upon any finding by a Washington court, except direct dismissals or exonerations. Upon forfeiture, 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 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.

A new section is added to allow WDFW to seize any animal unlawfully hunted or retrieved from the property of another if the person trespassed on the premises.

Wildlife Issues. *Penalties for Taking Protected Birds are Strengthened.* Criminal wildlife penalty assessments and two-year license revocations are created for a person convicted of unlawfully taking protected fish or wildlife. In addition to the underlying criminal sanctions, a \$2,000 assessment is required if certain species are killed, including the ferruginous hawk, common loon, bald eagle, or peregrine falcon. 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 person killed the animal with the intent of deriving economic profit. The assessment money is dedicated to the Fish and Wildlife Enforcement Reward Account.

Unlawful Hunting On, or Retrieving Wildlife From, the Property of Another is a New Crime. 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 Crime of Unlawful Use of a Dog is Expanded. The crime includes 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. WDFW is now required to base its actions on a reasonable belief that a dog is pursuing, harassing, attacking or killing a snow bound deer in which case it may (1) lawfully take a dog into custody; or (2) if necessary to avoid repeated harassment, injury or death to the specified wildlife listed, destroy the dog.

Hunting Licenses may be Revoked for Shooting a Person or Livestock While Hunting. If a hunter shoots another person or domestic livestock with a firearm, bow, or crossbow in a manner likely to injure or kill – or who does injure or kill – another person or domestic

livestock, the director of WDFW must revoke the hunting privileges of the shooter for three years for a shooting that could or does result in an injury. The privilege revocation must be extended to ten years if the shooting results in a human death. Additionally, the language allowing for suspension-appeal hearings is made identical to language in other WDFW statutes.

Unlawful Possession of a Rifle or Shotgun in a Motor Vehicle is Amended. Unlawful possession of a rifle or shotgun in a motor vehicle includes unlawful possession of a rifle or shotgun upon an off-road vehicle and allows for a rifle or shotgun to be discharged upon a motor vehicle or an off-road vehicle if the engine is turned off and not parked on or beside the maintained portion of a public road.

Unlawful Intentional or Negligent Feeding of a Large Wild Carnivore is Added as a New Crime. 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 giving rise to a negligent civil infraction within 24 hours.

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 scientific permit holders, fish and wildlife enforcement officers conducting authorized wildlife capture activities, and waste management facilities.

Fisheries Issues. *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 Use of Fish Buying and Dealing Licenses is Renamed. The new name is 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.

Resident and Non-resident Status. *WDFW's Definition of Resident is Amended.* The definition of resident for the purposes of hunting and fishing licenses is amended to add specificity as to how one can demonstrate that the person 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 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.

Resident Orca Whales. *Distance Requirements and Exemptions are Amended to Match Federal Law.* It is unlawful to cause a vessel or other object to approach within 600 feet (200 yards) of a southern resident orca or to position a vessel to be in the path of a whale within 1200 feet (400 yards). Vessel is defined and includes aircraft, canoes, fishing vessels, kayaks, tour boats, and whale watching boats among others. It is also unlawful to feed a southern resident orca.

There are several exemptions to the distance requirement, including the following: a federal government or state, tribal, or local vessel engaged in official duties involving law enforcement, search and rescue, or public safety; operation of a vessel in conjunction with a vessel traffic service under federal law; lawful engagement in a treaty Indian or commercial fishery; emergency situations that pose an imminent threat to persons, the vessel, or the environment; or engaging in activity pursuant to a permit, including scientific research and rescue or cleanup efforts overseen, coordinated, or authorized by a volunteer stranding network.

Technical Changes. Several technical changes are made including:

- The definition of “ex officio fish and wildlife officer” is clarified to show when the definition applies to commissioned officers of the federal government, other states, counties, municipalities, and tribes.
- The following terms are also defined: “anadromous game fish buyer,” “fish buyer,” “fur dealer,” “natural person,” “taxidermist,” and “wildlife meat cutter.”
- The term “license, permit, tag, or approval” rather than just “licenses” is used throughout the Unlawful Purchase or Use of a License statute for consistency.
- Under the Unlawful Purchase or Use of a License statute, it is prima facie evidence of a violation if a person buys or possesses a WA resident license when that person already has a resident license from another state or foreign country.

EFFECT OF CHANGES MADE BY ENERGY, NATURAL RESOURCES & MARINE WATERS COMMITTEE (Recommended Substitute):

- Adds two new provisions containing the sections of the large carnivore bill (SB 6139) which makes it unlawful to intentionally or negligently feed a large wild carnivore into the body of this bill. This includes the accompanying definitions, exceptions, and penalties.
- Deletes the new crime of malicious destruction of eggs or nests of non-protected wild birds and amends the infraction version of the crime to specify that the nest must be active which is defined as containing eggs or fledglings.

- Changes the unlawful use of a dog provision to more closely align with previous emergency rules. WDFW is now required to base its actions on a reasonable belief that a dog is pursuing, harassing, attacking or killing a snow bound deer in which case it may (1) lawfully take a dog into custody; or (2) if necessary to avoid repeated harassment, injury or death to the specified wildlife listed, destroy the dog.
- Changes the unlawful possession of a rifle or shotgun in a motor vehicle provision to explicitly include unlawful possession of a rifle or shotgun upon an off-road vehicle and allow for a rifle or shotgun to be discharged upon a motor vehicle or an off-road vehicle if the engine is turned off and not parked on or beside the maintained portion of a public road.
- Creates a new exemption to the distance requirements for southern resident orca whales allowing for rescue or cleanup efforts overseen, coordinated, or authorized by a volunteer stranding network.

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: PRO: This is agency request legislation carried over from last year, only with a narrower scope and title. The bill is limited to WDFW enforcement and definitions. The bill has been vetted for two years with various interested parties.

The new crime of unlawful hunting while trespassing is good for farm and property owners because it allows increased penalties for someone who knowingly trespasses on someone else's property.

Persons Testifying: PRO: Bruce Bjork, Mike Cenci, WDFW; Jack Field, WA Cattlemen's Assn.; Ed Owens, Hunter's Heritage Council and Coalition of Coastal Fisheries; Patti Case, Green Diamond; Tom Davis, WA Farm Bureau.