

HOUSE BILL REPORT

HB 2460

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to fish and wildlife law enforcement.

Brief Description: Regarding fish and wildlife law enforcement.

Sponsors: Representatives Blake, Chandler, Hurst, Lytton, Takko, Wilcox, Kretz, Warnick, Tharinger and Tarleton; by request of Department of Fish and Wildlife.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/23/14, 2/4/14 [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 the WDFW.

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; Lytton, Vice Chair; Buys, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Chandler, Dunshee, Haigh, Hurst, Kretz, Pettigrew, Stanford and Warnick.

Minority Report: Do not pass. Signed by 2 members: Representatives Orcutt and Schmick.

Staff: Jason Callahan (786-7117).

Background:

Washington Department of Fish and Wildlife Law Enforcement.

The enforcement officers of the Washington Department of Fish and Wildlife (WDFW) are general authority peace officers. This status authorizes the WDFW to enforce all criminal

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laws in the state. In addition to the WDFW law enforcement officers, the laws contained in Title 77 may be enforced by ex officio officers. These are certain law enforcement officers from different jurisdictions who are recognized to enforce fish and wildlife laws.

Unlawful Trade in Shark Fins.

A person commits the crime of unlawful trade in shark fins if that person offers to or does sell, purchase, or otherwise exchange a shark fin or derivative product for commercial purposes or prepares or processes a shark fin or derivative product for human or animal consumption for commercial purposes.

There are two exemptions to the crime of unlawful trade in shark fins. First, a person may take, possess, sell, or purchase sharks or shark parts to conduct research or education activities under a WDFW permit without being liable for unlawful trade in shark fins. Second, a person is not liable for the unlawful trade in shark fins for the offer to sell, purchase, or otherwise exchange for commercial purposes of shark fins or derivative products lawfully harvested or acquired before July 22, 2011.

Criminal Wildlife Penalty Assessments.

Criminal wildlife penalty assessments are assessed to a person convicted of the unlawful taking of certain wildlife species. In addition to the underlying criminal sanctions, an additional charge of between \$2,000 and \$12,000 may be assessed. 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 and used by the WDFW for enforcement efforts.

Unlawful Taking for Endangered or Protected Fish and Wildlife.

It is unlawful to hunt for, fish for, possess, or maliciously harass fish and wildlife that has been designated as endangered or protected. This extends to the malicious destructions of nests and eggs. This crime can be prosecuted as either a misdemeanor, gross misdemeanor, or a felony, depending on the status of the fish or wildlife injured and the perpetrator's history of convictions.

Unlawful Use of a Dog.

A person may be found guilty of unlawful use of dogs if the person negligently fails to prevent a dog under the person's control from pursuing, harassing, attacking, or killing deer, elk, moose, caribou, mountain sheep, or animals classified as endangered, or if the person uses a dog to hunt deer or elk. The WDFW may take a dog into custody or destroy the dog if there is a reasonable belief that the dog is being used to pursue, harass, attack, or kill a snow bound animal.

Summary of Substitute Bill:

Washington Department of Fish and Wildlife Law Enforcement.

The authority for a WDFW officer to require a person aged 16 or older to display photo identification is expanded to exofficio officers as well. Similarly, authority is also expanded

to ex officio officers to direct a person to stop at a WDFW-authorized check station and produce all hunting and fishing equipment for inspection.

Unlawful Trade in Shark Fins.

The exemption that allows a person to offer to or sell, purchase, or otherwise exchange for commercial purposes lawfully harvested or acquired before July 22, 2011, is removed.

Criminal Wildlife Penalty Assessments.

New criminal wildlife penalty assessments are established for certain fish species. These are assessments that must be paid in addition to any underlying criminal sanctions. The added species are white sturgeon longer than 55 inches (\$2,000 assessment) and wild salmon or steelhead (\$500 assessment). This assessment must be applied jointly and severally if more than one person is convicted of catching the same fish. These assessments must be doubled if the underlying violation occurs within 5 years of a previous gross misdemeanor or felony conviction related to fish and wildlife violations or if the trier of fact determines that the sturgeon or salmon were taken with the intent to derive economic profit.

The WDFW is required to revoke the fishing license of anyone who incurs an assessment and suspend that person's fishing privileges until the assessment is paid.

Unlawful Taking of Endangered or Protected Fish and Wildlife.

The elements of the crimes of unlawful taking of endangered or protected fish and wildlife are changed. To be prosecuted, a person no longer has to be found to have maliciously destroyed the eggs or nest of a protected or endangered species. Instead, the mental state that must be proven is that the person did so knowingly. However, the destruction of nests is limited to nests that are being actively used or that are likely to be reused annually even if empty at the time of the act.

Unlawful Use of a Dog.

The limitation that an animal being attacked by a dog must be snow bound before the WDFW can confiscate or destroy the dog is removed. In addition, clarity is provided that using dogs consistent with WDFW-approved hazing activity is not considered unlawful.

Other Enforcement Provisions.

A number of other enforcement-related changes are made. These include:

- specification that a member of the armed services must be on active duty and not retired in order to be considered a state resident for the purposes of hunting and fishing unless that person satisfies one of the other criteria for residency;
- adding the mental element of "reckless" to violations of the prohibition on wasting fish and wildlife;
- making failure to maintain wildlife rehabilitation records and reports a civil infraction;
- extending the crime of unlawful trapping to include wild birds;
- adding "possessing" to the list of unlawful verbs associated with introducing live plants and animals into the state (added to a list that contains "releasing," "planting," and "placing");

- differentiating between white and green sturgeon as it applies to unlawful recreational fishing (all green sturgeon are unlawful while only white sturgeon of a certain size are unlawful);
- declaring a public nuisance any article or device used for harassing fish or wildlife;
- updating elements of the crime of unlawful fish and shellfish accounting;
- expanding the definition of "vessel" as it applies to approaching an orca and establishes a \$500 fine for violating orca-related provisions;
- creating criminal liability for possessing fish or wildlife known to be taken in violation of another state or county's laws and for engaging in wildlife rehabilitation without a permit; and
- making permanent the option to conduct a pilot project that allows a nontribal member to fish on Lake Rufus Woods under a license issued by the Colville Indian tribe.

Substitute Bill Compared to Original Bill:

The substitute bill removes the specification that dogs are only allowed to be used for WDFW-approved wildlife hazing activities if that hazing is used to control wildlife or prevent damage to crops and the person minimizes the contact between the dog and the wildlife; removes redundancy of specifying that Washington means the state of Washington; expands the exemption to permitted taking of endangered or protected wildlife to include any permit issued by a state or federal agency; removes the new language that expanded the offense unlawful fishing to include when a person "takes or maliciously harasses" a threatened or endangered fish; removes the term "takes" from the offenses regarding white sturgeon, green sturgeon, and wild salmon or steelhead; and removes the now expired Lake Rufus Woods pilot project references and retains the Fish and Wildlife Commission's ability to adopt rules around that area of the state.

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) There are many instances of decreasing fish stocks but limited tools for the WDFW to use to address the problem. Many of the fines are too low to deter poaching of some of the slow-growing and long-lived fish species. Cross-border poaching and wildlife trafficking is also an issue for which the WDFW has limited tools. Many banned shark fins are still found in commerce because enforcement officers from the WDFW cannot prove that they were not bought before the existing grandfather clause.

(Opposed) None.

Persons Testifying: Steve Crown and Mike Cenci, Washington Department of Fish and Wildlife Police.

Persons Signed In To Testify But Not Testifying: None.