H-3091.1

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**HOUSE BILL 2260**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives MacEwen, Walsh, Eslick, Macri, Young, Kloba, Pollet, and Stokesbary

AN ACT Relating to prohibiting the spawning, incubation, and cultivation of Atlantic salmon in the marine waters regulated by the state; amending RCW 77.125.010, 15.85.020, 77.125.020, 77.125.030, and 77.115.010; creating a new section; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  Pacific salmon represent a foundational component of the economic, ecological, and cultural health of the state of Washington and of the Pacific Northwest region. Pacific salmon are also uniquely important to the commercial fishers and Indian tribes of Washington state. Despite multiple recovery efforts that have been underway for decades and that have cost hundreds of millions of dollars, the Pacific salmon populations of Puget Sound remain in danger, and multiple runs of Puget Sound Pacific salmon are listed as threatened or endangered under the federal endangered species act.

By contrast, Atlantic salmon are considered an aquatic invasive species by the Washington department of fish and wildlife. During the several decades that Atlantic salmon have been cultivated commercially in the marine waters of this state, there have been at least four instances in which significant numbers of Atlantic salmon escaped into the wild, impacting tribal, state, and international fisheries management. These escapements include escapes of approximately one hundred seven thousand Atlantic salmon in 1996, three hundred sixty-nine thousand Atlantic salmon in 1997, and one hundred fifteen thousand Atlantic salmon in 1999. Despite increased regulatory controls to address accidental releases of farmed Atlantic salmon, including chapter 86, Laws of 2001, approximately one hundred sixty thousand Atlantic salmon escaped from a marine aquaculture net pen facility in 2017.

There have been reports that escaped Atlantic salmon have been found with Pacific salmon fingerlings in their stomachs. Studies of Atlantic salmon in British Columbia have shown instances of colonization by Atlantic salmon in streams of British Columbia, and in some instances in British Columbia, feral Atlantic salmon have been reported to have successfully produced offspring. The cultivation of farmed Atlantic salmon in Washington's marine waters poses a risk of disease amplification and disease transmission. Escaped farmed Atlantic salmon also pose a risk to native Pacific salmon with regard to competition for resources, such as food and habitat.

Where Washington's Pacific salmon populations remain in decline in spite of significant recovery efforts, the legislature finds that it is necessary to draw upon its police power to prohibit the cultivation of Atlantic salmon in the marine waters regulated by the state.

**Sec.**  RCW 77.125.010 and 2001 c 86 s 1 are each amended to read as follows:

Marine aquaculture net pen facilities in Washington state have accidentally released Atlantic salmon into Puget Sound. ((~~It is necessary to minimize escapes through the implementation of statewide prevention measures~~)) These accidental releases include escapes of approximately one hundred seven thousand Atlantic salmon in 1996, three hundred sixty-nine thousand Atlantic salmon in 1997, and one hundred fifteen thousand Atlantic salmon in 1999. Despite increased regulatory controls on commercial salmon farming in this state, including chapter 86, Laws of 2001, approximately one hundred sixty thousand Atlantic salmon escaped from a marine aquaculture net pen facility in 2017. Because Atlantic salmon escapements have continued in spite of efforts at increased regulatory controls, it is now therefore unlawful to spawn, incubate, or cultivate Atlantic salmon in the marine waters regulated by the state including, but not limited to, Puget Sound, the Strait of Juan de Fuca, and Hood Canal.

**Sec.**  RCW 15.85.020 and 2003 c 39 s 7 are each amended to read as follows:

((~~Unless the context clearly requires otherwise,~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Aquaculture" means the process of growing, farming, or cultivating private sector cultured aquatic products in marine or freshwaters and includes management by an aquatic farmer.

(2) "Aquatic farmer" is a private sector person who commercially farms and manages the cultivating of private sector cultured aquatic products on the person's own land or on land in which the person has a present right of possession.

(3) "Private sector cultured aquatic products" are native, nonnative, or hybrids of marine or freshwater plants and animals that are propagated, farmed, or cultivated on aquatic farms under the supervision and management of a private sector aquatic farmer or that are naturally set on aquatic farms which at the time of setting are under the active supervision and management of a private sector aquatic farmer. When produced under such supervision and management, private sector cultured aquatic products include, but are not limited to, the following plants and animals:

|  |  |
| --- | --- |
| **Scientific Name** | **Common Name** |
| Enteromorpha | green nori |
| Monostroma | awo-nori |
| Ulva | sea lettuce |
| Laminaria | konbu |
| Nereocystis | bull kelp |
| Porphyra | nori |
| Iridaea |  |
| Haliotis | abalone |
| Zhlamys | pink scallop |
| Hinnites | rock scallop |
| Tatinopecten | Japanese or weathervane scallop |
| Protothaca | native littleneck clam |
| Tapes | manila clam |
| Saxidomus | butter clam |
| Mytilus | mussels |
| Crassostrea | Pacific oysters |
| Ostrea | Olympia and European oysters |
| Pacifasticus | crayfish |
| Macrobrachium | freshwater prawn |
| ((~~Salmo and~~)) Salvelinus | trout((~~,~~)) and char((~~, and Atlantic salmon~~)) |
| Oncorhynchus | salmon |
| Ictalurus | catfish |
| Cyprinus | carp |
| Acipenseridae | Sturgeon |

Private sector cultured aquatic products do not include herring spawn on kelp and other products harvested under a herring spawn on kelp permit issued in accordance with RCW 77.70.210.

(4) "Department" means the department of agriculture.

(5) "Director" means the director of agriculture.

**Sec.**  RCW 77.125.020 and 2001 c 86 s 2 are each amended to read as follows:

For the purposes of this chapter, "marine aquatic farming location" means a complete complex that may be composed of various marine enclosures, net pens, or other rearing vessels, food handling facilities, or other facilities related to the rearing of ((~~Atlantic salmon or other~~)) finfish, other than Atlantic salmon, in marine waters. A marine aquatic farming location is distinguished from the individual facilities that collectively compose the location.

**Sec.**  RCW 77.125.030 and 2001 c 86 s 3 are each amended to read as follows:

The director, in cooperation with the marine finfish aquatic farmers, shall develop proposed rules for the implementation, administration, and enforcement of marine finfish aquaculture programs. In developing such proposed rules, the director must use a negotiated rule-making process pursuant to RCW 34.05.310. The proposed rules shall be submitted to the appropriate legislative committees by January 1, 2002, to allow for legislative review of the proposed rules. In the event that any such rules in effect as of the effective date of this section authorize or provide for the spawning, incubation, or cultivation of Atlantic salmon in the marine waters that are regulated by the state, the director shall develop proposed rules for the implementation, administration, and enforcement of marine finfish aquaculture programs that do not authorize or provide for the spawning, incubation, or cultivation of Atlantic salmon in the marine waters that are regulated by the state. The proposed rules shall include the following elements:

(1) Provisions for the prevention of escapes of cultured marine finfish aquaculture products from enclosures, net pens, or other rearing vessels;

(2) Provisions for the development and implementation of management plans to facilitate the most rapid recapture of live marine finfish aquaculture products that have escaped from enclosures, net pens, or other rearing vessels, and to prevent the spread or permanent escape of these products;

(3) Provisions for the development of management practices based on the latest available science, to include:

(a) Procedures for inspections of marine aquatic farming locations on a regular basis to determine conformity with law and the rules of the department relating to the operation of marine aquatic farming locations; and

(b) Operating procedures at marine aquatic farming locations to prevent the escape of marine finfish, to include the use of net antifoulants;

(4) Provisions for the eradication of those cultured marine finfish aquaculture products that have escaped from enclosures, net pens, or other rearing vessels found spawning in state waters;

(5) Provisions for the determination of appropriate species, stocks, and races of marine finfish aquaculture products allowed to be cultured at specific locations and sites; and

(6) ((~~Provisions for the development of an Atlantic salmon watch program similar to the one in operation in British Columbia, Canada. The program must provide for the monitoring of escapes of Atlantic salmon from marine aquatic farming locations, monitor the occurrence of naturally produced Atlantic salmon, determine the impact of Atlantic salmon on naturally produced and cultured finfish stocks, provide a focal point for consolidation of scientific information, and provide a forum for interaction and education of the public; and~~

~~(7)~~)) Provisions for the development of an education program to assist marine aquatic farmers so that they operate in an environmentally sound manner.

**Sec.**  RCW 77.115.010 and 2000 c 107 s 122 are each amended to read as follows:

(1) The director of agriculture and the director shall jointly develop a program of disease inspection and control for aquatic farmers as defined in RCW 15.85.020. The program shall be administered by the department under rules established under this section. The purpose of the program is to protect the aquaculture industry and wildstock fisheries from a loss of productivity due to aquatic diseases or maladies. As used in this section "diseases" means, in addition to its ordinary meaning, infestations of parasites or pests. The disease program may include, but is not limited to, the following elements:

(a) Disease diagnosis;

(b) Import and transfer requirements;

(c) Provision for certification of stocks;

(d) Classification of diseases by severity;

(e) Provision for treatment of selected high-risk diseases;

(f) Provision for containment and eradication of high-risk diseases;

(g) Provision for destruction of diseased cultured aquatic products;

(h) Provision for quarantine of diseased cultured aquatic products;

(i) Provision for coordination with state and federal agencies;

(j) Provision for development of preventative or control measures;

(k) Provision for cooperative consultation service to aquatic farmers; and

(l) Provision for disease history records.

(2) The commission shall adopt rules implementing this section. However, such rules shall have the prior approval of the director of agriculture and shall provide therein that the director of agriculture has provided such approval. The director of agriculture or the director's designee shall attend the rule-making hearings conducted under chapter 34.05 RCW and shall assist in conducting those hearings. The authorities granted the department by these rules and by RCW 77.12.047(1)(g), 77.60.060, 77.60.080, 77.65.210, ((~~77.115.020,~~)) 77.115.030, and 77.115.040 constitute the only authorities of the department to regulate private sector cultured aquatic products and aquatic farmers as defined in RCW 15.85.020. Except as provided in subsection (3) of this section, no action may be taken against any person to enforce these rules unless the department has first provided the person an opportunity for a hearing. In such a case, if the hearing is requested, no enforcement action may be taken before the conclusion of that hearing.

(3) The rules adopted under this section shall specify the emergency enforcement actions that may be taken by the department, and the circumstances under which they may be taken, without first providing the affected party with an opportunity for a hearing. Neither the provisions of this subsection nor the provisions of subsection (2) of this section shall preclude the department from requesting the initiation of criminal proceedings for violations of the disease inspection and control rules.

(4) A person shall not violate the rules adopted under subsection (2) or (3) of this section or violate RCW 77.115.040.

(5) In administering the program established under this section, the department shall use the services of a pathologist licensed to practice veterinary medicine.

(6) The director in administering the program shall not place constraints on or take enforcement actions in respect to the aquaculture industry that are more rigorous than those placed on the department or other fish-rearing entities.

(7) In the event that any rules adopted pursuant to this section in effect as of the effective date of this section authorize or provide for the spawning, incubation, or cultivation of Atlantic salmon in the marine waters that are regulated by the state, the director shall develop proposed rules pursuant to this section that do not authorize or provide for the spawning, incubation, or cultivation of Atlantic salmon in the marine waters that are regulated by the state.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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