

HB 2957 - H AMD 1068

By Representative Blake

ADOPTED 02/14/2018

1 Strike everything after the enacting clause and insert the
2 following:

3 NEW SECTION. **Sec. 1.** Recent developments have thrown into
4 stark relief the threat that nonnative marine finfish aquaculture may
5 pose to Washington's native salmon populations. But just as evidence
6 has emerged that nonnative marine finfish aquaculture may endanger
7 Washington's native salmon populations, so too has evidence emerged
8 that marine finfish aquaculture in general may pose unacceptable
9 risks not only to Washington's native salmon populations but also to
10 the broader health of Washington's marine environment. Given this
11 evidence, the legislature intends to phase out nonnative finfish
12 aquaculture in Washington's marine waters. Because the state of the
13 science and engineering with regard to marine finfish aquaculture may
14 be evolving, the legislature further intends to study this issue in
15 greater depth, and to revisit the issue of marine finfish aquaculture
16 once additional research becomes available.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 79.105
18 RCW to read as follows:

19 (1) The department may not allow nonnative marine finfish
20 aquaculture as an authorized use under any new lease or other use
21 authorization.

22 (2) The department may not renew or extend a lease or other use
23 authorization in existence on the effective date of this section
24 where the use includes nonnative marine finfish aquaculture.

25 NEW SECTION. **Sec. 3.** A new section is added to chapter 77.125
26 RCW to read as follows:

27 (1) The department may authorize or permit activities associated
28 with the use of marine net pens for nonnative marine finfish
29 aquaculture only if these activities are performed under a lease of
30 state-owned aquatic lands in effect on the effective date of this

1 section. The department may not authorize or permit any of these
2 activities or operations after the expiration date of the relevant
3 lease of state-owned aquatic lands in effect on the effective date of
4 this section.

5 (2) For purposes of this section, "state-owned aquatic lands" has
6 the same meaning as defined in RCW 79.105.060.

7 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.48
8 RCW to read as follows:

9 (1) The department may issue national pollutant discharge
10 elimination system permits associated with nonnative marine finfish
11 aquaculture only if these activities are performed under a lease of
12 state-owned aquatic lands in effect on the effective date of this
13 section. The department may not issue national pollutant discharge
14 elimination system permits in connection with any of these activities
15 or operations after the expiration date of the relevant lease of
16 state-owned aquatic lands in effect on the effective date of this
17 section.

18 (2) For purposes of this section, "state-owned aquatic lands" has
19 the same meaning as defined in RCW 79.105.060.

20 NEW SECTION. **Sec. 5.** (1) The departments of ecology,
21 agriculture, and fish and wildlife, as well as the department of
22 natural resources, shall continue the existing effort to update
23 guidance and informational resources to industry and governments for
24 planning and permitting commercial marine net pen aquaculture. As
25 part of this effort, the departments shall seek advice and technical
26 assistance from the Northwest Indian fisheries commission, and the
27 national centers for coastal ocean science, and shall invite
28 consultation and participation from the University of Washington
29 school of aquatic and fishery sciences, Western Washington
30 University, Washington State University, Northwest Indian College,
31 and additional authorities, as appropriate, including federally
32 recognized Indian tribes. The guidance must be designed to eliminate
33 commercial marine net pen escapement and to eliminate negative
34 impacts to water quality and native fish, shellfish, and wildlife. At
35 a minimum, the guidance must address the following topics:

- 36 (a) Local shoreline permitting;
- 37 (b) Water quality;

1 (c) The state of the science concerning marine finfish
2 aquaculture impacts on native fish, shellfish, and wildlife;

3 (d) Best management practices for the safe and effective
4 operation of finfish aquaculture in the marine environment;

5 (e) Interagency coordination in permitting, inspections, and
6 enforcement; and

7 (f) Recommendations for future legislative oversight of marine
8 finfish net pen aquaculture.

9 (2) The departments must report to the legislature, consistent
10 with RCW 43.01.036, by November 1, 2019.

11 (3) This section expires June 30, 2020.

12 **Sec. 6.** RCW 77.115.010 and 2000 c 107 s 122 are each amended to
13 read as follows:

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

24 (a) Disease diagnosis;

25 (b) Import and transfer requirements;

26 (c) Provision for certification of stocks;

27 (d) Classification of diseases by severity;

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

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

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

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

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

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

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

- 1 (1) Provision for disease history records.
- 2 (2) The commission shall adopt rules implementing this section.
3 However, such rules shall have the prior approval of the director of
4 agriculture and shall provide therein that the director of
5 agriculture has provided such approval. The director of agriculture
6 or the director's designee shall attend the rule-making hearings
7 conducted under chapter 34.05 RCW and shall assist in conducting
8 those hearings. The authorities granted the department by these rules
9 and by RCW 77.12.047(1)(g), 77.60.060, 77.60.080, 77.65.210,
10 (~~77.115.020,~~) 77.115.030, and 77.115.040 constitute the only
11 authorities of the department to regulate private sector cultured
12 aquatic products and aquatic farmers as defined in RCW 15.85.020.
13 Except as provided in subsection (3) of this section, no action may
14 be taken against any person to enforce these rules unless the
15 department has first provided the person an opportunity for a
16 hearing. In such a case, if the hearing is requested, no enforcement
17 action may be taken before the conclusion of that hearing.
- 18 (3) The rules adopted under this section shall specify the
19 emergency enforcement actions that may be taken by the department,
20 and the circumstances under which they may be taken, without first
21 providing the affected party with an opportunity for a hearing.
22 Neither the provisions of this subsection nor the provisions of
23 subsection (2) of this section shall preclude the department from
24 requesting the initiation of criminal proceedings for violations of
25 the disease inspection and control rules.
- 26 (4) A person shall not violate the rules adopted under subsection
27 (2) or (3) of this section or violate RCW 77.115.040.
- 28 (5) In administering the program established under this section,
29 the department shall use the services of a pathologist licensed to
30 practice veterinary medicine.
- 31 (6) The director in administering the program shall not place
32 constraints on or take enforcement actions in respect to the
33 aquaculture industry that are more rigorous than those placed on the
34 department or other fish-rearing entities.
- 35 (7) The department must implement this section consistent with
36 section 3 of this act.

37 **Sec. 7.** RCW 77.115.030 and 2000 c 107 s 124 are each amended to
38 read as follows:

1 (1) The director shall consult regarding the disease inspection
2 and control program established under RCW 77.115.010 with federal
3 agencies and Indian tribes to assure protection of state, federal,
4 and tribal aquatic resources and to protect private sector cultured
5 aquatic products from disease that could originate from waters or
6 facilities managed by those agencies.

7 (2) With regard to the program, the director may enter into
8 contracts or interagency agreements for diagnostic field services
9 with government agencies and institutions of higher education and
10 private industry.

11 (3) The director shall provide for the creation and distribution
12 of a roster of biologists having a specialty in the diagnosis or
13 treatment of diseases of fish or shellfish. The director shall adopt
14 rules specifying the qualifications which a person must have in order
15 to be placed on the roster.

16 (4) The department must implement this section consistent with
17 section 3 of this act.

18 **Sec. 8.** RCW 77.115.040 and 2011 c 339 s 37 are each amended to
19 read as follows:

20 (1) All aquatic farmers, as defined in RCW 15.85.020, shall
21 register with the department. The application fee is one hundred five
22 dollars. The director shall assign each aquatic farm a unique
23 registration number and develop and maintain in an electronic
24 database a registration list of all aquaculture farms. The department
25 shall establish procedures to annually update the aquatic farmer
26 information contained in the registration list. The department shall
27 coordinate with the department of health using shellfish growing area
28 certification data when updating the registration list.

29 (2) Registered aquaculture farms shall provide the department
30 with the following information:

31 (a) The name of the aquatic farmer;

32 (b) The address of the aquatic farmer;

33 (c) Contact information such as telephone, fax, web site, and
34 email address, if available;

35 (d) The number and location of acres under cultivation, including
36 a map displaying the location of the cultivated acres;

37 (e) The name of the landowner of the property being cultivated or
38 otherwise used in the aquatic farming operation;

1 (f) The private sector cultured aquatic product being propagated,
2 farmed, or cultivated; and

3 (g) Statistical production data.

4 (3) The state veterinarian shall be provided with registration
5 and statistical data by the department.

6 (4) The department must implement this section consistent with
7 section 3 of this act.

8 **Sec. 9.** RCW 77.125.030 and 2001 c 86 s 3 are each amended to
9 read as follows:

10 The director, in cooperation with the marine finfish aquatic
11 farmers, shall develop proposed rules for the implementation,
12 administration, and enforcement of marine finfish aquaculture
13 programs. In developing such proposed rules, the director must use a
14 negotiated rule-making process pursuant to RCW 34.05.310. The
15 proposed rules shall be submitted to the appropriate legislative
16 committees by January 1, 2002, to allow for legislative review of the
17 proposed rules. The proposed rules shall include the following
18 elements:

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

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

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

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

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

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

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

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

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

15 (8) The department must implement this section consistent with
16 section 3 of this act.

17 **Sec. 10.** RCW 77.12.047 and 2017 c 159 s 2 are each amended to
18 read as follows:

19 (1) The commission may adopt, amend, or repeal rules as follows:

20 (a) Specifying the times when the taking of wildlife, fish, or
21 shellfish is lawful or unlawful.

22 (b) Specifying the areas and waters in which the taking and
23 possession of wildlife, fish, or shellfish is lawful or unlawful.

24 (c) Specifying and defining the gear, appliances, or other
25 equipment and methods that may be used to take wildlife, fish, or
26 shellfish, and specifying the times, places, and manner in which the
27 equipment may be used or possessed.

28 (d) Regulating the importation, transportation, possession,
29 disposal, landing, and sale of wildlife, fish, shellfish, or seaweed
30 within the state, whether acquired within or without the state.
31 However, this authority must be exercised consistent with sections 3

32 and 12 of this act. Additionally, the rules of the department must
33 prohibit any person, including department staff, from translocating a
34 live elk from an area with elk affected by hoof disease to any other
35 location except:

36 (i) Consistent with a process developed by the department with
37 input from the affected federally recognized tribes for translocation
38 for monitoring or hoof disease management purposes; or

- 1 (ii) Within an elk herd management plan area affected by hoof
2 disease.
- 3 (e) Regulating the prevention and suppression of diseases and
4 pests affecting wildlife, fish, or shellfish.
- 5 (f) Regulating the size, sex, species, and quantities of
6 wildlife, fish, or shellfish that may be taken, possessed, sold, or
7 disposed of.
- 8 (g) Specifying the statistical and biological reports required
9 from fishers, dealers, boathouses, or processors of wildlife, fish,
10 or shellfish.
- 11 (h) Classifying species of marine and freshwater life as food
12 fish or shellfish.
- 13 (i) Classifying the species of wildlife, fish, and shellfish that
14 may be used for purposes other than human consumption.
- 15 (j) Regulating the taking, sale, possession, and distribution of
16 wildlife, fish, shellfish, or deleterious exotic wildlife.
- 17 (k) Establishing game reserves and closed areas where hunting for
18 wild animals or wild birds may be prohibited.
- 19 (l) Regulating the harvesting of fish, shellfish, and wildlife in
20 the federal exclusive economic zone by vessels or individuals
21 registered or licensed under the laws of this state.
- 22 (m) Authorizing issuance of permits to release, plant, or place
23 fish or shellfish in state waters.
- 24 (n) Governing the possession of fish, shellfish, or wildlife so
25 that the size, species, or sex can be determined visually in the
26 field or while being transported.
- 27 (o) Other rules necessary to carry out this title and the
28 purposes and duties of the department.
- 29 (2)(a) Subsections (1)(a), (b), (c), (d), and (f) of this section
30 do not apply to private tideland owners and lessees and the immediate
31 family members of the owners or lessees of state tidelands, when they
32 take or possess oysters, clams, cockles, borers, or mussels,
33 excluding razor clams, produced on their own private tidelands or
34 their leased state tidelands for personal use.
- 35 (b) "Immediate family member" for the purposes of this section
36 means a spouse, brother, sister, grandparent, parent, child, or
37 grandchild.
- 38 (3) Except for subsection (1)(g) of this section, this section
39 does not apply to private sector cultured aquatic products as defined

1 in RCW 15.85.020. Subsection (1)(g) of this section does apply to
2 such products.

3 **Sec. 11.** RCW 50.04.075 and 2011 c 4 s 12 are each amended to
4 read as follows:

5 (1) With respect to claims with an effective date prior to July
6 1, 2012, "dislocated worker" means any individual who:

7 (a) Has been terminated or received a notice of termination from
8 employment;

9 (b) Is eligible for or has exhausted entitlement to unemployment
10 compensation benefits; and

11 (c) Is unlikely to return to employment in the individual's
12 principal occupation or previous industry because of a diminishing
13 demand for their skills in that occupation or industry.

14 (2) With respect to claims with an effective date on or after
15 July 1, 2012, "dislocated worker" means any individual who:

16 (a) Has been involuntarily and indefinitely separated from
17 employment as a result of a permanent reduction of operations at the
18 individual's place of employment, ~~((or))~~ has separated from a
19 declining occupation, or has separated from employment as a result of
20 this act; and

21 (b) Is eligible for or has exhausted entitlement to unemployment
22 compensation benefits.

23 NEW SECTION. **Sec. 12.** A new section is added to chapter 77.125
24 RCW to read as follows:

25 (1) For marine finfish aquaculture, the facility operator must
26 hire, at their own expense, a marine engineering firm approved by the
27 department to conduct inspections. Inspections must occur
28 approximately every two years, when net pens are fallow, and must
29 include topside and mooring assessments related to escapement
30 potential, structural integrity, permit compliance, and operations.

31 (2) Any net pen facility must be found to be in good working
32 order to receive fish.

33 (3) If the facility is found to be in imminent danger of collapse
34 or release of finfish, the director may require the operator to
35 remove fish or deny a fish transfer permit."

36 Correct the title.

EFFECT: States the intent of the Legislature to phase out nonnative marine finfish aquaculture and to revisit the issue of marine finfish aquaculture once additional research becomes available.

Prohibits the Department of Natural Resources (DNR) from entering into a new lease, or renewing or extending an existing lease, where the use includes nonnative marine finfish aquaculture.

Authorizes the Department of Fish and Wildlife (WDFW) to permit activities associated with the use of marine net pens for nonnative marine finfish aquaculture only if such activities are performed in connection with a lease of state-owned aquatic lands in effect as of the effective date of the act.

Authorizes the Department of Ecology (Ecology) to issue National Pollutant Discharge Elimination System permits associated with nonnative marine finfish aquaculture only if such activities are performed in connection with a lease of state-owned aquatic lands in effect as of the effective date of the act.

Requires Ecology, WDFW, DNR, and the Department of Agriculture (WSDA) to continue the existing effort to update guidance for planning and permitting commercial marine net pen aquaculture. Requires the departments to continue to seek advice and technical assistance from the Northwest Indian Fisheries Commission, and the National Centers for Coastal Ocean Science, and to invite consultation and participation from the University of Washington school of aquatic and fishery sciences, Western Washington University, Washington State University, Northwest Indian College, and additional authorities, as appropriate, including federally recognized Indian tribes. Requires the guidance to address the following topics, among others: The state of the science concerning marine finfish aquaculture impacts on native fish, shellfish, and wildlife; best management practices for the safe and effective operation of finfish aquaculture in the marine environment; and recommendations for future legislative oversight of marine finfish net pen aquaculture. Requires the Departments to submit a report containing the recommendations to the Legislature by November 1, 2019.

Requires WSDA and WDFW to implement various statutes concerning fish and aquaculture consistent with the phase out of nonnative marine finfish aquaculture contained in the act.

Provides that separation from employment as a result of the act qualifies a person as a dislocated worker for the purposes of the Training Benefits Program, which provides extended unemployment benefits while a person participates in approved training for another career.

Requires any marine finfish aquaculture facility permitted by WDFW to be periodically inspected by a marine engineering firm.

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