
ENGROSSED HOUSE BILL 2957

State of Washington

65th Legislature

2018 Regular Session

By Representatives Lytton, Peterson, Robinson, Wilcox, Taylor, Stambaugh, Sawyer, Chapman, Pollet, and Stanford

Read first time 01/30/18. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to reducing escape of nonnative finfish from
2 marine finfish aquaculture facilities; amending RCW 77.115.010,
3 77.115.030, 77.115.040, 77.125.030, 77.12.047, and 50.04.075; adding
4 a new section to chapter 79.105 RCW; adding new sections to chapter
5 77.125 RCW; adding a new section to chapter 90.48 RCW; creating new
6 sections; and providing an expiration date.

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

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

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

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

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

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

11 (1) The department may authorize or permit activities associated
12 with the use of marine net pens for nonnative marine finfish
13 aquaculture only if these activities are performed under a lease of
14 state-owned aquatic lands in effect on the effective date of this
15 section. The department may not authorize or permit any of these
16 activities or operations after the expiration date of the relevant
17 lease of state-owned aquatic lands in effect on the effective date of
18 this section.

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

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

23 (1) The department may issue national pollutant discharge
24 elimination system permits associated with nonnative marine finfish
25 aquaculture only if these activities are performed under a lease of
26 state-owned aquatic lands in effect on the effective date of this
27 section. The department may not issue national pollutant discharge
28 elimination system permits in connection with any of these activities
29 or operations after the expiration date of the relevant lease of
30 state-owned aquatic lands in effect on the effective date of this
31 section.

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

34 NEW SECTION. **Sec. 5.** (1) The departments of ecology,
35 agriculture, and fish and wildlife, as well as the department of
36 natural resources, shall continue the existing effort to update
37 guidance and informational resources to industry and governments for

1 planning and permitting commercial marine net pen aquaculture. As
2 part of this effort, the departments shall seek advice and technical
3 assistance from the Northwest Indian fisheries commission, and the
4 national centers for coastal ocean science, and shall invite
5 consultation and participation from the University of Washington
6 school of aquatic and fishery sciences, Western Washington
7 University, Washington State University, Northwest Indian College,
8 and additional authorities, as appropriate, including federally
9 recognized Indian tribes. The guidance must be designed to eliminate
10 commercial marine net pen escapement and to eliminate negative
11 impacts to water quality and native fish, shellfish, and wildlife. At
12 a minimum, the guidance must address the following topics:

- 13 (a) Local shoreline permitting;
 - 14 (b) Water quality;
 - 15 (c) The state of the science concerning marine finfish
16 aquaculture impacts on native fish, shellfish, and wildlife;
 - 17 (d) Best management practices for the safe and effective
18 operation of finfish aquaculture in the marine environment;
 - 19 (e) Interagency coordination in permitting, inspections, and
20 enforcement; and
 - 21 (f) Recommendations for future legislative oversight of marine
22 finfish net pen aquaculture.
- 23 (2) The departments must report to the legislature, consistent
24 with RCW 43.01.036, by November 1, 2019.
- 25 (3) This section expires June 30, 2020.

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

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

- 38 (a) Disease diagnosis;
- 39 (b) Import and transfer requirements;

1 (c) Provision for certification of stocks;
2 (d) Classification of diseases by severity;
3 (e) Provision for treatment of selected high-risk diseases;
4 (f) Provision for containment and eradication of high-risk
5 diseases;
6 (g) Provision for destruction of diseased cultured aquatic
7 products;
8 (h) Provision for quarantine of diseased cultured aquatic
9 products;
10 (i) Provision for coordination with state and federal agencies;
11 (j) Provision for development of preventative or control
12 measures;
13 (k) Provision for cooperative consultation service to aquatic
14 farmers; and
15 (l) Provision for disease history records.
16 (2) The commission shall adopt rules implementing this section.
17 However, such rules shall have the prior approval of the director of
18 agriculture and shall provide therein that the director of
19 agriculture has provided such approval. The director of agriculture
20 or the director's designee shall attend the rule-making hearings
21 conducted under chapter 34.05 RCW and shall assist in conducting
22 those hearings. The authorities granted the department by these rules
23 and by RCW 77.12.047(1)(g), 77.60.060, 77.60.080, 77.65.210,
24 (~~77.115.020,~~) 77.115.030, and 77.115.040 constitute the only
25 authorities of the department to regulate private sector cultured
26 aquatic products and aquatic farmers as defined in RCW 15.85.020.
27 Except as provided in subsection (3) of this section, no action may
28 be taken against any person to enforce these rules unless the
29 department has first provided the person an opportunity for a
30 hearing. In such a case, if the hearing is requested, no enforcement
31 action may be taken before the conclusion of that hearing.
32 (3) The rules adopted under this section shall specify the
33 emergency enforcement actions that may be taken by the department,
34 and the circumstances under which they may be taken, without first
35 providing the affected party with an opportunity for a hearing.
36 Neither the provisions of this subsection nor the provisions of
37 subsection (2) of this section shall preclude the department from
38 requesting the initiation of criminal proceedings for violations of
39 the disease inspection and control rules.

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

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

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

10 (7) The department must implement this section consistent with
11 section 3 of this act.

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

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

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

24 (3) The director shall provide for the creation and distribution
25 of a roster of biologists having a specialty in the diagnosis or
26 treatment of diseases of fish or shellfish. The director shall adopt
27 rules specifying the qualifications which a person must have in order
28 to be placed on the roster.

29 (4) The department must implement this section consistent with
30 section 3 of this act.

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

33 (1) All aquatic farmers, as defined in RCW 15.85.020, shall
34 register with the department. The application fee is one hundred five
35 dollars. The director shall assign each aquatic farm a unique
36 registration number and develop and maintain in an electronic
37 database a registration list of all aquaculture farms. The department
38 shall establish procedures to annually update the aquatic farmer

1 information contained in the registration list. The department shall
2 coordinate with the department of health using shellfish growing area
3 certification data when updating the registration list.

4 (2) Registered aquaculture farms shall provide the department
5 with the following information:

6 (a) The name of the aquatic farmer;

7 (b) The address of the aquatic farmer;

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

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

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

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

16 (g) Statistical production data.

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

19 (4) The department must implement this section consistent with
20 section 3 of this act.

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

23 The director, in cooperation with the marine finfish aquatic
24 farmers, shall develop proposed rules for the implementation,
25 administration, and enforcement of marine finfish aquaculture
26 programs. In developing such proposed rules, the director must use a
27 negotiated rule-making process pursuant to RCW 34.05.310. The
28 proposed rules shall be submitted to the appropriate legislative
29 committees by January 1, 2002, to allow for legislative review of the
30 proposed rules. The proposed rules shall include the following
31 elements:

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

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

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

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

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

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

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

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

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

27 (8) The department must implement this section consistent with
28 section 3 of this act.

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

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

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

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

36 (c) Specifying and defining the gear, appliances, or other
37 equipment and methods that may be used to take wildlife, fish, or
38 shellfish, and specifying the times, places, and manner in which the
39 equipment may be used or possessed.

1 (d) Regulating the importation, transportation, possession,
2 disposal, landing, and sale of wildlife, fish, shellfish, or seaweed
3 within the state, whether acquired within or without the state.
4 However, this authority must be exercised consistent with sections 3
5 and 12 of this act. Additionally, the rules of the department must
6 prohibit any person, including department staff, from translocating a
7 live elk from an area with elk affected by hoof disease to any other
8 location except:

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

12 (ii) Within an elk herd management plan area affected by hoof
13 disease.

14 (e) Regulating the prevention and suppression of diseases and
15 pests affecting wildlife, fish, or shellfish.

16 (f) Regulating the size, sex, species, and quantities of
17 wildlife, fish, or shellfish that may be taken, possessed, sold, or
18 disposed of.

19 (g) Specifying the statistical and biological reports required
20 from fishers, dealers, boathouses, or processors of wildlife, fish,
21 or shellfish.

22 (h) Classifying species of marine and freshwater life as food
23 fish or shellfish.

24 (i) Classifying the species of wildlife, fish, and shellfish that
25 may be used for purposes other than human consumption.

26 (j) Regulating the taking, sale, possession, and distribution of
27 wildlife, fish, shellfish, or deleterious exotic wildlife.

28 (k) Establishing game reserves and closed areas where hunting for
29 wild animals or wild birds may be prohibited.

30 (l) Regulating the harvesting of fish, shellfish, and wildlife in
31 the federal exclusive economic zone by vessels or individuals
32 registered or licensed under the laws of this state.

33 (m) Authorizing issuance of permits to release, plant, or place
34 fish or shellfish in state waters.

35 (n) Governing the possession of fish, shellfish, or wildlife so
36 that the size, species, or sex can be determined visually in the
37 field or while being transported.

38 (o) Other rules necessary to carry out this title and the
39 purposes and duties of the department.

1 (2)(a) Subsections (1)(a), (b), (c), (d), and (f) of this section
2 do not apply to private tideland owners and lessees and the immediate
3 family members of the owners or lessees of state tidelands, when they
4 take or possess oysters, clams, cockles, borers, or mussels,
5 excluding razor clams, produced on their own private tidelands or
6 their leased state tidelands for personal use.

7 (b) "Immediate family member" for the purposes of this section
8 means a spouse, brother, sister, grandparent, parent, child, or
9 grandchild.

10 (3) Except for subsection (1)(g) of this section, this section
11 does not apply to private sector cultured aquatic products as defined
12 in RCW 15.85.020. Subsection (1)(g) of this section does apply to
13 such products.

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

16 (1) With respect to claims with an effective date prior to July
17 1, 2012, "dislocated worker" means any individual who:

18 (a) Has been terminated or received a notice of termination from
19 employment;

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

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

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

27 (a) Has been involuntarily and indefinitely separated from
28 employment as a result of a permanent reduction of operations at the
29 individual's place of employment, ~~((or))~~ has separated from a
30 declining occupation, or has separated from employment as a result of
31 this act; and

32 (b) Is eligible for or has exhausted entitlement to unemployment
33 compensation benefits.

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

36 (1) For marine finfish aquaculture, the facility operator must
37 hire, at their own expense, a marine engineering firm approved by the
38 department to conduct inspections. Inspections must occur

1 approximately every two years, when net pens are fallow, and must
2 include topside and mooring assessments related to escapement
3 potential, structural integrity, permit compliance, and operations.

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

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

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