

# SENATE BILL REPORT

## SB 5626

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As Reported by Senate Committee On:  
Agriculture, Water, Natural Resources & Parks, February 21, 2019

**Title:** An act relating to ensuring the safe and productive cultivation of shellfish.

**Brief Description:** Ensuring the safe and productive cultivation of shellfish.

**Sponsors:** Senators Takko, Warnick, Hobbs, Honeyford and Van De Wege.

**Brief History:**

**Committee Activity:** Agriculture, Water, Natural Resources & Parks: 2/19/19, 2/21/19 [DP-WM, DNP].

**Brief Summary of Bill**

- Directs the Department of Ecology (DOE) to issue permits for the use of pesticides to control infestations of burrowing shrimp in Willapa Bay and Grays Harbor.
- Requires DOE to transfer the regulation of pesticides to control burrowing shrimp in Willapa Bay and Grays Harbor to the Department of Agriculture by July 1, 2020.

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### SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

**Majority Report:** Do pass and be referred to Committee on Ways & Means.

Signed by Senators Van De Wege, Chair; Salomon, Vice Chair; Warnick, Ranking Member; Honeyford and Short.

**Minority Report:** Do not pass.

Signed by Senators McCoy and Rolfes.

**Staff:** Jeff Olsen (786-7428)

**Background:** The federal Clean Water Act establishes the National Pollutant Discharge Elimination System (NPDES), which regulates discharges of pollutants to surface waters. In

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*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.*

Washington, NPDES permitting authority is delegated to the state, allowing the DOE to issue NPDES permits. NPDES permits are issued for terms of no more than five years at a time.

The Washington Department of Agriculture (WSDA) administers the federal Insecticide, Fungicide, and Rodenticide Act, as well as the state Pesticide Control Act and the state Pesticide Application Act. Its activities include adopting rules requiring the registration and restricting the use of pesticides, testing and certifying pesticide applicators, issuing handler and worker pesticide training documentation, and providing technical assistance to pesticide applicators and workers.

**Summary of Bill:** By May 15, 2019, the DOE shall authorize the use of imidacloprid to control infestations of burrowing shrimp in Willapa Bay and Grays Harbor for the 2019 treatment season. The authorization must be issued to any entity that applied for a NPDES permit as of January 2016. The authorization must be limited to an aggregate maximum of 1,000 acres of imidacloprid application during the 2019 treatment season.

By April 15, 2020, DOE must issue a NPDES permit for the use of pesticides to control infestations of burrowing shrimp in association with the cultivation of shellfish. DOE may not impose limitations, standards, or monitoring requirements in connection with such a permit that are any more stringent than those contained in the federal registration for any pesticide subject to the permit. The NPDES permit must limit the total treated acreage to an aggregate maximum of 1,000 acres per year and must prohibit the use of helicopters to apply pesticides. The permit is exempt from the requirements for water pollution control, the State Environmental Policy Act, and sediment management standards.

Ecology must delegate its NPDES permit authority to regulate pesticides used to control burrowing shrimp to the WSDA through a memorandum of understanding, effective July 1, 2020. Until the delegation of authority receives federal approval, the WSDA's adoption or issuance of water quality rules, permits, programs, and directives regarding the application of pesticides used to control burrowing shrimp on tidelands in Willapa Bay and Grays Harbor must be accomplished after reaching agreement with the director of DOE. Adoption or issuance and implementation must be accomplished so that compliance with all rules, permits, programs, and directives will achieve compliance with all federal and state water pollution control laws.

Funding of \$1.5 million is provided to the DOE and the WSDA to conduct a study on the use of imidacloprid for the control of burrowing shrimp in Willapa Bay and Grays Harbor. Funding provided to the WSDA are to continue efforts to use an integrated pest management approach to control burrowing shrimp and may also be used for payments to Washington State University, the United States Department of Agriculture, and outside consultants for their participation in monitoring and technical assistance. The WSDA must report its findings to the appropriate committees of the Legislature by June 30, 2020 on the progress and results of the monitoring program.

**Appropriation:** The bill contains appropriations totaling \$1.5 million from various accounts.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:** PRO: Populations of burrowing shrimp are exploding and causing extensive damage to shellfish cultivation operations and Willapa Bay habitat. The shellfish industry has been managing this successfully for 50 years. Recently, DOE denied a permit, preventing the use of imidacloprid to control burrowing shrimp populations. The shellfish industry is the largest employer in Pacific County, a rural county that relies on shellfish harvesting for a significant number of employees. The shellfish industry is losing a significant amount of oyster beds each year. Burrowing shrimp turn the ground into quick sand and everything sinks into the mud. Attempts have been made to manage the problem mechanically but to date they have not been successful. DOE is ignoring science that shows there are not significant impacts to non-target species, human health or the environment from the use of imidacloprid. There is currently not a single control tool to address this problem. Due to the burrowing shrimp, there is a significant impact to the ecosystem of Willapa Bay and habitat is in trouble.

CON: The shellfish industry has created many problems including impacting eelgrass. Reducing the populations of burrowing shrimp will have impacts to the ecosystem. Salmon rely on a health ecosystem, and endangered orcas rely on healthy salmon populations. There needs to be a balance between ecological concerns and sustainable aquaculture practices. Imidacloprid should not be used in water, and impacts many species, including birds. The bill requires DOE to issue an NPDES permit that is inconsistent with the state's water quality and sediment management standards and runs counter to the department's responsibility. It is very likely that any permit issued under this statute would be challenged. DOE will continue to work collaboratively with shellfish growers to protect water quality and tideland habitats.

OTHER: DNR has acknowledged that the impacts of burrowing ghost shrimp is an ecosystem issue that needs the support of local, state, and federal government agencies. Each year, growers are losing entire beds of oysters and clams, along with critical habitat, and DNR is committed to working with our partners to find solutions. WSDA is a regulatory agency, but is not currently administering a permit program in compliance with state and federal water quality laws. A delegation of permit authority would be dependent on federal authorization. WSDA continues to invest time and resources in a path towards integrated pest management.

**Persons Testifying:** PRO: Senator Dean Takko, Prime Sponsor; Ken Wiegardt, President, Wiegardt & Sons, Inc., President, Willapa Grays Harbor Oyster Growers Association; Kathleen Nisbet Moncy, Vice President, Nisbet Oyster Co., Inc.; Annie Herrold, Herrold Fish & Oyster; Marilyn Sheldon, Northern Oyster Company; Jeffrey Barrett, Paradox Natural Resources; Lisa Olsen, Pacific County Commissioner, District #1; Heather Hansen, Washington Friends of Farms and Forests; Mike Nordin, Pacific Conservation District.

CON: Joanna Grist, PCC Community Markets; Nicole Michel, Audubon Washington and National Audubon Society; Denise Clifford, DOE; Patrick Townsend, Protect Zangle Cove; Gail Sheikadezia, citizen; Elyette Weinstein, Washington League of Women Voters; Janey Aiken, citizen; Maradel Gale, citizen; Marcia Lagerloef, citizen; Laura Hendricks, Coalition

To Protect Puget Sound.

OTHER: Joanna Eide, Department of Natural Resources; Kelly McLain, WSDA.

**Persons Signed In To Testify But Not Testifying:** PRO: Dick Sheldon, Willapa Resources; Jebadiah Sheldon, Northern Oyster Company; Scott Karnas, Willapa Fish and Oyster, farm manager; David Ryan, citizen; Norm Olsen, Olsen & Son Oyster Company; Phil Olsen, Olsen & Son Oyster Company; Dave Nisbet, Nisbet Oyster Company; Robert F. Rose, Rose Ranch; Natalie Sahli, citizen.

CON: Martha Gray, citizen; Susan Macomson, citizen; Karen Miller, citizen; Ross Barkhurst, citizen; Kathryn Townsend, citizen; Megan Dunn, Northwest Center for Alternatives to Pesticides, Kirk Kirkland, Coalition.