

HOUSE BILL REPORT

SSB 5201

As Reported by House Committee On:
Agriculture & Natural Resources
General Government Appropriations & Oversight

Title: An act relating to fish and wildlife management.

Brief Description: Regarding issues that impact the department of fish and wildlife.

Sponsors: Senate Committee on Natural Resources & Marine Waters (originally sponsored by Senators Hargrove, Swecker, Regala, Fraser and Parlette; by request of Department of Fish and Wildlife).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 3/8/11, 3/15/11, 3/16/11, 3/22/11 [DPA];
General Government Appropriations & Oversight: 3/28/11 [DPA(APPG w/o AGNR)].

**Brief Summary of Substitute Bill
(As Amended by House)**

- Changes laws administered by the Washington Department of Fish and Wildlife (WDFW) relating to wildlife issues, wildlife-related commercial operations, fisheries issues, law enforcement, fires, and definitions.
- Creates a scientific review process of decisions made by the WDFW and the Fish and Wildlife Commission.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 13 members: Representatives Blake, Chair; Stanford, Vice Chair; Chandler, Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Dunshee, Hinkle, Kretz, Lytton, Orcutt, Pettigrew, Rolfes and Van De Wege.

Staff: Jason Callahan (786-7117).

Background:

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.

Title 77 RCW constitutes the majority of the statutes that direct the functions and authorities of the Washington Department of Fish and Wildlife (WDFW). There are a myriad of legal concepts within the 25 chapters that constitute Title 77. These include how and when a citizen can be convicted of a fish or wildlife crime, under what conditions the WDFW can issue a license to engage in fish and wildlife related activities, and how the WDFW manages the land and species under its jurisdiction.

Wildlife Issues.

If a hunter shoots another person or domestic livestock, the Director of the WDFW (Director) must revoke the hunting privileges of the shooter for three years. The privilege revocation must be extended to 10 years if the shooting was done negligently, recklessly, or intentionally. A two-year license suspension is required for any person convicted of the unlawful taking of endangered fish or wildlife in the first degree.

The Fish and Wildlife Reward Account (Reward Account) is created as a non-appropriated account in the state treasury. The Reward Account receives the revenues generated from the assessment of criminal wildlife penalty assessments for the unlawful hunting of big game, criminal wildlife penalties, and any money or property donated to the fund. The Director may only authorize expenditures from the Reward Account for wildlife enforcement uses, including the investigation and prosecution of fish and wildlife offenses and providing rewards to informants.

Criminal wildlife penalty assessments are collected from individuals convicted of either the first or second degree variety of unlawful big game hunting. The assessments range between \$8,000 and \$24,000, depending on the species of big game killed.

The WDFW may apply to the Department of Health (DOH) for a registration that allows the WDFW to use controlled substances in chemical capture programs. There is no requirement that the WDFW be provided with the registration.

Wildlife-related Commercial Operations.

Many of the crimes enforced by the WDFW require that the individual charged be shown to be acting for commercial purposes. An individual is considered to be acting for commercial purposes if he or she engages in conduct that relates to commerce in fish and wildlife. This may include taking, delivering, selling, buying, or trading fish or wildlife when there is a present or future exchange of value. Evidence that a person acts for commercial purposes includes using gear typical in commercial fisheries, possessing more than three times his or her personal limit, delivering fish or wildlife to a wholesaler, taking fish or shellfish using a vessel designated for a commercial fishery, holding a commercial fishery license, dealing in raw fur, or performing taxidermy services for a fee.

All taxidermists are required to maintain a ledger consistent with rules developed by the Fish and Wildlife Commission (Commission). Failing to maintain a ledger is a misdemeanor.

Fisheries Issues.

The holder of a commercial fishing or charter boat license may designate up to two individuals as alternate operators of their vessels. An alternate operator is a person other than the license holder who is permitted to operate the vessel associated with the underlying license. Alternate operators must purchase a \$22 license in order to be designated.

A \$100 surcharge is required with the purchase of a commercial salmon fishery license, delivery license, or charter license. The money collected by the surcharge must be used exclusively for salmon enhancement projects undertaken by regional fisheries enhancement groups.

WDFW Law Enforcement.

The three state agencies generally considered to be responsible for the enforcement of the state's natural resources laws are the State Parks and Recreation Commission (Parks Commission), the Department of Natural Resources (DNR), and the WDFW. Each agency is directed to enforce the statutory provisions related to their own agency.

Of the three agencies, only the enforcement officers of the WDFW are general authority peace officers. This status authorizes the WDFW to enforce all criminal laws in the state. By contrast, the DNR and the Parks Commission employ limited authority peace officers. These are officers of an agency that have as a job duty the apprehension or detection of persons committing infractions or violating criminal laws relating to limited subject areas.

In addition to the WDFW law enforcement officers, Title 77 may be enforced by ex-officio officers. These are commissioned general law enforcement officers from cities, counties, the state, or the federal government. The term also includes enforcement officers of the DNR and the Parks Commission when operating on DNR-managed lands or a state park and the enforcement personnel of the United States Fish and Wildlife Service, National Marine Fisheries Service, and United States Forest Service.

The Interlocal Cooperation Act allows one or more public entities to enter into an agreement allowing the entities to exercise jointly any power, privilege, or authority conferred upon the signatory agencies. The authority to enter into these agreements is available to any agency of Washington, or any federal, tribal, local, or out-of-state government.

Prior to the sharing of authorities, the public entities must enter into a written agreement. This agreement must outline the duration of the agreement, its purpose or purposes, how the undertaking will be financed, how the agreement can be terminated, who will administer the joint authorities, and the precise nature of any new entity created by the agreement.

Resident and Non-resident Status.

Many licenses issued by the WDFW for hunting and fishing are priced at different levels depending on whether or not the purchaser is a Washington resident. To qualify as a resident, a person must have maintained a permanent place of abode in Washington for the 90 days immediately preceding license application and establish a formal intent to continue residing in Washington. The person must also not be licensed to fish or hunt as a resident of another state.

A person under the age of 18 who lives in another state can qualify as a Washington resident if he or she has a parent who qualifies as a Washington resident and is not licensed as a resident in another state.

Summary of Amended Bill:

Peer-Reviewed Science.

Appointees of the Washington State University and the University of Washington must, together, appoint a third person to collectively manage a biological science review process that has the capability of reviewing any draft or final decisions of the WDFW or the Commission. The director of the WDFW must submit to the process any information as requested by the participants in the process relating to the decisions of the WDFW or the Commission.

The initial step in the process, after the request for information, is a basic review of the information and an initial determination regarding the scope and effect of the decision. If the scope or effect is determined to be significant, the decision may be subjected to both blind and open peer review. The results of the peer review must be reported to the Legislature and made available for publication.

In addition to this process, any individual member of the Commission may request a scientific literature review of any available data before making a decision in his or her capacity as a member of the Commission. The resulting information must be made available on the Commission's internet website.

Wildlife Issues.

Feeding predatory animals is made unlawful. A civil infraction is created for any person whom a WDFW enforcement officer or local animal control authority has probable cause to believe is *negligently* feeding, attempting to feed, or attracting bears, cougars, or wolves by placing food, food waste, or any other substance in a manner that may cause a public safety risk. Similar activity done *intentionally* is a misdemeanor. It is also a misdemeanor to fail to correct an issue within 24 hours giving rise to a negligent civil infraction.

The prohibition on animal feeding is not enforceable against a person engaged in forest practices, hunting, trapping, or farming using generally accepted farming practices. Also exempt are lawful zoos, waste management facilities, and WDFW personnel capturing wildlife to address conflict issues.

The two-year license revocation for individuals convicted of the unlawful taking of endangered fish or wildlife in the first degree is extended to three years. The three-year revocation of a hunting license for the shooting of a person or livestock while hunting is expanded to include not only shooting that results from the discharge of a firearm, but also the discharge of bows and crossbows. The 10-year license revocation for reckless,

intentional, or negligent shooting of another person is changed. Instead of a shooting having to be reckless, intentional, or negligent, the WDFW must invoke a 10-year license suspension anytime a person is killed by a hunter. This suspension must occur regardless of the intent or state of mind of the shooter. However, the shooting of livestock is removed from being a possible reason for a 10-year license suspension.

Criminal wildlife penalty assessments and two-year license revocations are created for a person convicted of the unlawful taking of protected fish or wildlife. In addition to the underlying criminal sanctions, an additional \$2,000 assessment is required if certain species are killed. The species triggering the \$2,000 assessment are: ferruginous hawk, common loon, bald eagle, and peregrine falcon. The assessment money is dedicated to the Reward Account.

The ability of the WDFW to apply to the DOH for the ability to purchase controlled substances for chemical capture programs is expanded to include the use of controlled substances to euthanize injured, sick, or unwanted wildlife. The ability for the DOH to deny the WDFW a limited registration to use controlled substances is removed. The DOH must issue the limited registration to the WDFW.

The Commission is provided with specific authority to use the rulemaking process to clarify the actual species that is affected by a provision of state law that only uses a common name. The same authority allows the Commission to identify the species that makes up a class, or group, of species identified in state law by a common group name.

Wildlife-related Commercial Operations.

The list of specific activities that may be used as evidence to show that someone is acting for commercial purposes is expanded to include the act of packing, cutting, processing, or storing wildlife meat for a fee or for the exchange of goods and services. A definition of "wildlife meat cutter" is provided to describe a person who engages in this business activity.

A new misdemeanor is created for taxidermists, fur dealers, and wildlife meat cutters who fail to maintain required business records for each wildlife carcass or part received while acting for commercial purposes and holding, possessing, or storing wildlife. The record of receipt of wildlife received must be maintained in English for three years at the location where the wildlife is stored or at the principal place of business.

The contents of the records that must be maintained are to be outlined by the Commission in rule. At a minimum, these rules must require maintained records to include client's names and addresses, the date of receipt, and the number and species of wildlife parts received.

Taxidermists are excluded from the scope of an existing misdemeanor relating to the maintenance of a taxidermist ledger.

The definition of game farm is expanded to include the confinement, propagation, hatching, and feeding of wildlife being raised for commercial purposes.

Fisheries Issues.

The ability for a charter boat license holder to designate up to two alternate operators for the license is removed. However, a charter boat license holder may operate a vessel that is designated under a commercial fishing license even if the charter boat operator is not the holder of the underlying fishing license.

The WDFW is authorized to use up to 20 percent of the money dedicated to regional fisheries enhancement group projects raised through a surcharge on commercial salmon fishing, delivery, and charter licenses to directly provide guidance to regional fisheries enhancement groups. This guidance includes professional, administrative, and technical training, project proposal compatibility review, contract and fund management, and training in budgeting and accounting principles.

The WDFW must prepare a one-time report to the Legislature that identifies potential programs, license fees, and mechanisms by which private, non-profit salmon enhancement organizations could raise and control funds that would be used for the goals of the organization.

WDFW Law Enforcement.

The specificity as to training requirements for WDFW law enforcement officers is removed. Also removed is the concept of an ex-officio fish and wildlife officer. Instead, the Director may use the Interlocal Cooperation Act to contract with other law enforcement agencies to enforce the laws and rules administered by the WDFW. Any liability arising from the actions of the contracted law enforcement agency belongs to that agency and not the WDFW.

Fires on WDFW-managed Land.

A gross misdemeanor is created for the willful start of a fire on lands owned or controlled by the WDFW other than campfires, fires in stoves, lanterns, barbeques, or fires used by public entities to manage wildfires. The scope of permissible campfires is to be determined by rule of the Commission.

Any person who negligently starts a fire, or is responsible for allowing fire to spread, on WDFW-controlled lands is made liable for all expenses related to fighting the fire, investigation of the fire's source, and pursuing litigation that is incurred by the state, a municipality, or any United States fire protection agency. The entity incurring the reasonable expense is empowered to place a lien on property owned by the responsible party.

Resident and Non-resident Status.

The definition of "resident" for the purposes of hunting and fishing licenses is amended to add specificity as to how one can demonstrate that he or she has a permanent place of abode in Washington and has intent to remain a resident of Washington. A permanent place of abode can be demonstrated through the use of a Washington address for tax purposes, being a registered voter, using Washington for the state of residence for the purposes of holding public office, and being the custodial parent of a child in a Washington school. Intent to remain a resident of Washington can be shown by the possession of a Washington driver's

license, a state-issued identification card, or the ownership of a motor vehicle licensed in Washington.

Members of the United States Armed Forces and their spouses can also demonstrate resident status. Military personnel temporarily stationed in Washington can claim residency by providing a copy of military orders showing the temporary station. Permanently-stationed military personnel must show an official document listing Washington as the state of legal residence.

The existing crime of unlawful purchase or use of a license in the second degree is expanded to include the act of purchasing a Washington resident license from the WDFW while holding a resident license from another state or country.

Amended Bill Compared to Substitute Bill:

The amended bill: (1) creates a three-member biological science review process to review significant decisions of the WDFW and the Commission and, if appropriate, conduct a peer review of those decisions with the appropriate scientific community; (2) provides intent language stating that the biological science review process only serves a review function and is not responsible for balancing the fish and wildlife management mandates of the state; (3) allows a taxidermist, fur dealer, or wildlife meat cutter to record the license number of the person delivering product as an optional alternative to recording personal information; (4) authorizes the Commission to use their rule-making authority to clear up any ambiguity created by the statutory use of common names for species and classes of species; and (5) directs the WDFW to prepare a one-time report to the Legislature that identifies potential programs, license fees, and mechanisms by which private, nonprofit salmon enhancement organizations would be enabled to raise and control funds that can be used for the salmon enhancement goals of the organizations.

Appropriation: None.

Fiscal Note: Requested on March 22, 2011.

Effective Date of Amended 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) This bill is similar to the House companion and continued support is warranted.

(Opposed) None.

Persons Testifying: Bruce Bjork, Washington Department of Fish and Wildlife.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS & OVERSIGHT

Majority Report: Do pass as amended by Committee on General Government Appropriations & Oversight and without amendment by Committee on Agriculture & Natural Resources. Signed by 8 members: Representatives Hudgins, Chair; Miloscia, Vice Chair; Blake, Fitzgibbon, Ladenburg, Moscoso, Pedersen and Van De Wege.

Minority Report: Without recommendation. Signed by 5 members: Representatives McCune, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Ahern, Armstrong and Wilcox.

Staff: Owen Rowe (786-7391) and Jason Callahan (786-7117).

Summary of Recommendation of Committee On General Government Appropriations & Oversight Compared to Recommendation of Committee On Agriculture & Natural Resources:

The General Government Appropriations and Oversight Committee striking amendment clarifies that the Washington Department of Fish and Wildlife (WDFW) is not required to create or annotate any information provided to the biological science review panel created in the striking amendment and specifies that the results of the biological science review process may not be used as the basis for the cause of action. Furthermore, the striking amendment specifies that the third-party review must exclude additional WDFW interactions and provides additional language regarding the scope of the biological science review process's authority. Finally, the amendment requires any person who loses or abandons net fishing gear to report the loss to the WDFW while maintaining language encouraging the reporting of lost shellfish pots.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Amended 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) The preliminary fiscal note is exaggerated on the striking amendment. The WDFW has been asked how to limit the fiscal impact of the amendment on the WDFW but there has been no response yet. This amendment creates a simple peer review process of the WDFW's science that informs decisions. There should be little to no cost to the University of Washington as well. The WDFW estimated impact for monthly reporting, or database development, as well as the idea that there would be impact on the WDFW to assemble and collate information for the review panel, is erroneous. The WDFW should have a blind peer review of its science separate from the WDFW. There is an amendment to the striking amendment that should eliminate the WDFW's angst about this policy. Scientists should be reviewing decisions by the WDFW, not just the public. This is agency request legislation

from the WDFW. There is concern about the scientific review panel's impact on the workload and budget of the WDFW. Move this bill forward.

(Opposed) None.

Persons Testifying: Representative Dunshee; and Bruce Bjork, Washington Department of Fish and Wildlife.

Persons Signed In To Testify But Not Testifying: None.