

SENATE BILL REPORT

SHB 1939

As of March 21, 1995

Title: An act relating to shellfish resources.

Brief Description: Requiring an appeal of the decision regarding tribal shellfish rights.

Sponsors: House Committee on Natural Resources (originally sponsored by Representatives Fuhrman, Beekma, Chappell, Smith, Campbell, Kremen, Cairnes, Buck, Thompson and Hargrove).

Brief History:

Committee Activity: Natural Resources: 3/30/95.

SENATE COMMITTEE ON NATURAL RESOURCES

Staff: Ross Antipa (786-7413)

Background: On May 19, 1989, 16 treaty tribes in Western Washington initiated a new proceeding in the on-going legal case known as the Boldt case (*U.S. v Washington*). The tribes seek a determination of the nature and extent of their off-reservation treaty rights to harvest shellfish.

The state of Washington is a defendant in this case along with private tideland owners and commercial shellfish growers.

Judge Rafeedie issued a decision on December 20, 1994, that affirmed the tribes' treaty right to take shellfish from tidelands and bedlands of Puget Sound and the north coast of Washington. The court determined that shellfish included all species of shellfish. The only limitation on the harvest of shellfish is that contained in the treaty language stating:

"The right of taking fish, at all usual and accustomed grounds and stations, is further secured to the Indians in common with all citizens of the territory; ...: *Provided, however, that they shall not take shellfish from any beds staked or cultivated by citizens.*"

The court interpreted "staked and cultivated beds" as those "artificial beds that have been staked and cultivated notwithstanding their location in private tidal lands" and do not include natural or native shellfish beds.

Though Judge Rafeedie issued an oral decision on December 20, 1994, he did not order any immediate action that must be taken to implement his decision. The judge asked all parties to present an implementation plan by February 15, 1995. The parties have not been able to agree on an implementation plan, and the court is expected to issue a final order from which an appeal may be taken.

Prior to February 15, 1995, the state Department of Fish and Wildlife closed the Puget Sound and Strait of Juan de Fuca commercial crab season, effective February 17, 1995. This crab fishing season was scheduled from October 1, 1994 to April 15, 1995.

Under the original Boldt decision of 1974 and during the 20 years of continuing court jurisdiction that has followed, a system of co-management of the fish resource has developed between the state and the tribes. There have been numerous sub-proceedings in which the court has been asked to resolve disputes between the tribes and the state of Washington over implementation.

Summary of Bill: The Legislature strongly encourages and supports the Attorney General in appealing the federal district court decision in *U.S. v Washington*, subproceeding 89-3 to the Ninth Circuit Court of Appeals, and encourages the Attorney General to request a stay of the decision pending outcome of an appeal. The Legislature declares its intent to provide resources necessary to support full prosecution of the appeal and related proceedings.

The departments of Fish and Wildlife, Natural Resources, and the Parks and Recreation Commission must manage the state's shellfish resources in a manner consistent with management policies in place prior to the December 20, 1994, ruling of federal district court, until the court rules otherwise.

The Governor and the relevant executive branch agencies must request that federal agencies make available federally owned tidelands for tribal shellfish harvest as a part of the solution to this conflict. Other parties to the litigation are encouraged to make the same request of the federal government.

Appropriation: None.

Fiscal Note: Not requested.

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