

# HOUSE BILL REPORT

## SSB 6135

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### As Passed House - Amended:

March 1, 2012

**Title:** An act relating to fish and wildlife enforcement.

**Brief Description:** Regarding enforcement of fish and wildlife violations.

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

### Brief History:

#### Committee Activity:

Agriculture & Natural Resources: 2/21/12 [DP];

General Government Appropriations & Oversight: 2/22/12, 2/23/12 [DPA].

#### Floor Activity:

Passed House - Amended: 3/1/12, 96-0.

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

- Makes a number of changes related to the enforcement policies of the Washington Department of Fish and Wildlife (WDFW) and the crimes primarily enforced by the WDFW.
- Creates new fish and wildlife related crimes, decriminalizes certain acts, provides new penalties for existing crimes, and changes details for certain crimes.
- Provides new direction to the WDFW regarding seizure and forfeiture of property.
- Provides new definitions for existing terms.
- Creates an infraction, with certain exemptions, for feeding or attempting to attract large wild carnivores to land or a building.
- Removes the limitation on agreements between the WDFW and private sector partners to resume or continue a salmon hatchery operation that makes the agreements applicable to only hatcheries that were closed in 2009 or slated for closure in the 2009-2011 biennium.

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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.*

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## HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

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

**Staff:** Jason Callahan (786-7117).

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## HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS & OVERSIGHT

**Majority Report:** Do pass as amended. Signed by 13 members: Representatives Hudgins, Chair; Miloscia, Vice Chair; Moscoso, Vice Chair; McCune, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Ahern, Armstrong, Blake, Fitzgibbon, Ladenburg, Pedersen, Van De Wege and Wilcox.

**Staff:** Michael Bennion (786-7118).

### **Background:**

Title 77 Revised Code of Washington (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 RCW. 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 some aspect of fish and wildlife related activities, and how the WDFW manages the land and species under its jurisdiction.

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 enforcement of infractions or criminal laws relating to limited subject areas.

In addition to the WDFW law enforcement officers, Title 77 RCW 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 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 entity 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 in these agreements is available to any agency of Washington, 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.

The limitation on agreements between the WDFW and private sector partners to resume or continue a salmon hatchery operation that makes the agreements applicable to only hatcheries that were closed in 2009 or slated for closure in the 2009-2011 biennium is removed. Private sector hatchery partners operating chum salmon hatcheries may, under permit from the WDFW, harvest some of the hatchery fish for sale. Any sale proceeds must be reinvested into the hatchery.

### **Summary of Amended Bill:**

#### New Crimes.

A collection of new crimes are created. One crime is the unlawful hunting on, or retrieving wildlife from, the property of another. This new crime, prosecutable as a misdemeanor, applies if a person knowingly enters onto or remains unlawfully on the premises of another for the purpose of hunting or retrieving hunted wildlife. A person cited for this violation may use a defense that the premises in question was open to the public when the hunting occurred, that the person reasonably believed the landowner would have allowed the access, or that the person reasonably believed that the lands in question were public lands. In addition to prosecution for a misdemeanor, a person convicted of this new crime faces license revocation and the suspension of hunting privileges for two years.

The intentional feeding of bears, wolves, and cougars is made unlawful. A violation of this prohibition can be punished as a civil infraction if the feeding occurred negligently and as a criminal misdemeanor if the feeding was intentional.

The *negligent* feeding of large wild carnivores occurs when a person provides, leaves, or places in a building or on land any food, food waste, or other substance that could attract a large carnivore in a situation where a reasonable person would understand that the act could attract a carnivore. An infraction for this behavior may be written by an enforcement officer employed by the WDFW, an ex officio fish and wildlife officer, or a local animal control officer if there is probable cause to believe that the behavior poses a risk to the safety of a person, livestock, or pet or if the person failed to comply with a written warning within two days of the warning's issuance. Written warnings may be issued if there are articulable facts to support the idea that a person is responsible for placing the food, food waste, or other substance in an inappropriate place and that the act poses a risk to the safety of people, pets, or livestock.

There are some exceptions from the prohibition against feeding carnivores. These exceptions include: permitted forest practices, licensed hunting and fishing, generally accepted ranching and farming operations, waste disposal facilities, permitted scientific collections, and employees and agents of the WDFW.

A person may be cited for the criminal misdemeanor of *intentional* feeding of large carnivores if the provision of food or food waste in a way that could attract carnivores was purposeful or done knowingly. A misdemeanor may also be cited if a person who receives an infraction for the negligent feeding of carnivores fails to correct the problem within 24 hours of being issued the infraction.

#### New Penalties for Existing Crimes.

Specific existing crimes related to fish and wildlife are added to other non-fish and wildlife crimes on the ranked list of seriousness levels for felonious acts. By adding crimes to this list, they become part of the standard sentencing guidelines used by judges upon conviction.

The following is added to the list of crimes with a seriousness level III ranking:

- unlawful taking of endangered fish or wildlife; and
- Unlawful Trafficking in Fish, Shellfish, or Wildlife in the first degree.

The following is added to the list of crimes with a seriousness level II ranking:

- commercial fishing without a license;
- engaging in unlicensed fish dealing activity;
- unlawful participation of non-Indians in an Indian fishery;
- unlawful purchase or use of a license; and
- Unlawful Trafficking in Fish, Shellfish, or Wildlife in the second degree.

The following is added to the list of crimes with a seriousness level I ranking:

- spotlighting big game;
- suspension of the WDFW privileges;
- unlawful fish and shellfish accounting;
- unlawful release of deleterious exotic wildlife;
- unlawful use of a net to take fish;
- unlawful use of prohibited aquatic animal species; and
- violating commercial fishing areas or times.

Criminal wildlife penalty assessments 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, peregrine falcon, and golden eagle. The assessment must be doubled if the person kills one of the identified species within five years of conviction of another significant wildlife-related crime or if the animal was killed with the intent of deriving economic profit. The assessment money is dedicated to the Fish and Wildlife Enforcement Reward Account (Account).

### Decriminalization of Existing Crimes.

The penalties for certain acts are changed from a criminal act to a civil infraction. In most instances, criminal sanctions still apply for more egregious violations while the civil penalty applies to acts lesser in scope. In total, more than 15 acts are changed from criminal to civil. These include the following:

- wasting fish and wildlife valued at less than \$250;
- failing to have a fishing license on a person when one is owned;
- taking seaweed unlawfully, but having less than double the daily personal collection limit;
- maliciously taking the eggs of a protected bird;
- attempting, unsuccessfully, to hunt wildlife that is not classified as game;
- failing to report trapping activity;
- posting "no hunting" signs on property not owned by the poster;
- violating the terms of scientific collection permits; and
- holding a hunting or fishing contest using live wildlife.

Corresponding changes are made to the relevant criminal statutes to reflect the civil nature of certain acts. This includes the revocation of four statutes.

### Changing Details of Existing Crimes.

The crime of unlawful use of a dog is expanded to include using a dog to harass, kill, or attack wildlife (in addition to pursuing). The species protected from unlawful dog use is expanded from just deer and elk to include moose, caribou, and mountain sheep. The WDFW is also provided with the authority to address the actual dog found being used in the underlying criminal act. If there is a reasonable belief that a dog is pursuing, harassing, attacking, or killing a snowbound deer, elk, moose, caribou, mountain sheep, or a protected or endangered species, the WDFW may either lawfully take the dog into custody and destroy the dog if necessary to avoid repeated harassment.

For the crime of waste of fish or wildlife, the elements do not change; however, the list of acts that serve as prima facie evidence of the crime is expanded to include abandoning an animal at a meat processor.

When the crime of unlawful trafficking in fish, shellfish, or wildlife is prosecuted, each individual transaction of the defendant may be aggregated if the acts represent a common scheme or plan. The sum of the aggregation may result in a higher charging level. In addition, the penalty for an offense in the second degree is changed from a gross misdemeanor to a class C felony and the penalty for an offense in the first degree is changed from a class C felony to a class B felony.

A new act is added to the crime of Unlawful Recreational Fishing in the first degree. The new act, which can trigger prosecution, is possession of a salmon or steelhead during a closed season. The same crime in the second degree can be prosecuted if a person pursues fish without first obtaining the proper license and catch reporting documentation.

The crime of unlawful possession of a loaded firearm in a motor vehicle is changed to limit the triggering firearm possession to only rifles and shotguns. However, the crime is expanded to include rifles and shotguns being carried on an off-road vehicle. An exception is created for the crime for individuals who discharge a rifle or shotgun from a nonmoving vehicle as long as the vehicle's engine is turned off and the vehicle is not parked on or alongside a public road.

The crime of unlawful use of fish buying and dealing licenses is rebranded as unlawful fish and shellfish catch accounting. In addition to the new name, a new act is added to the list of prosecutable acts. The new act is the failure to sign a fish receiving ticket or failure to provide the required information on the ticket.

A new prosecutable behavior is added for the crime of the unlawful purchase or use of a license. The new prosecutable behavior is the holding of an resident license issued by the WDFW while also holding a resident license from another state. This crime is also expanded beyond just licenses issued by the WDFW to include tags, permits, and other permissions.

Laws protecting orcas from interference are changed. The penalty, a civil infraction, may be pursued if a person approaches within 200 yards of a member of the southern resident orca pod in a vessel, positions a vessel within 400 yards of the path of an orca, feeds an orca, or fails to disengage a vessel's transmission when within 200 yards of an orca. Exemptions are included for lawful vessel operations and certain volunteer efforts to assist a beached orca without triggering the infraction. The exemptions may be used as affirmative defenses provable by the preponderance of the evidence.

#### Seizure and Forfeiture.

The process for disposing of forfeited, illegally harvested fish and wildlife is changed. Upon the seizure of commercially harvested fish and shellfish, a fish and wildlife officer may sell the product to a wholesale buyer and deposit the proceeds in the Account. Seized recreationally caught animals may be donated to a qualifying charitable organization.

Seized fish and wildlife is forfeited to the state upon conviction or any other criminal court outcome that allows the defendant to voluntarily continue or dismiss a case according to specific terms or conditions. Upon forfeiture, the WDFW may retain the fish and wildlife for official use, release the property to another law enforcement agency, donate the property, or sell the property and deposit the proceeds into the Account.

If a court outcome does not allow seized fish and wildlife to be forfeited to the state, then the WDFW must either return the seized fish or wildlife or return the value of the fish or wildlife if it has been donated or sold.

#### New and Changing Definitions.

The definition of an ex officio fish and wildlife officer is expanding, thereby adding new options for satisfying the requirements for becoming an ex officio officer for the purposes of

enforcing fish and wildlife laws. In addition to being a commissioned general law enforcement officer, a person can become an ex officio officer by being:

- a limited authority officer with another state or federal agency that is operating under a mutual law enforcement assistance agreement with the WDFW;
- a qualified fish and wildlife officer from another state if the other state's agency is operating under a mutual law enforcement assistance agreement with the WDFW; or
- a tribal police officer in Washington who successfully meets the state's requirements for law enforcement certification if there is a mutual law enforcement assistance agreement with the WDFW and the employing tribe and the tribe's law enforcement meets the state's requirements for general authority law enforcement status.

The definition of "game farm" is expanded from properties where wildlife is held and raised for commercial purposes to include properties that also confine, propagate, hatch, or feed wildlife. Criminal and civil prohibitions related to game farms are expanded by reference to properties satisfying the expanded definition. Bullfrogs are removed from the definition of "wild animal."

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 in Washington, using Washington for the state of residence for the purposes of holding public office, or being the custodial parent of a child attending school in Washington. 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 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 definition of "acting for commercial purposes" is expanded to include wildlife meat preparation done for a fee. The definition is limited for fur dealers. Fur dealers only come under the definition if their acts are done in exchange for compensation. The definition change affects many of the crimes enforced by the WDFW that require the individual charged be shown to be acting for commercial purposes.

#### Other Changes.

The age above which fish and wildlife officers may require a person to display a driver's license or other identification is decreased from 18 years old to 16 years old. In addition, a fish and wildlife officer may request identification documents from any person over the age of 18, not just those who purchased a hunting or fishing license over the Internet.

The requirements for serving as a fish and wildlife officer are amended to be in line with other general law enforcement personnel certification requirements.

The ability for the WDFW to revoke a license and suspend hunting and fishing privileges is expanded from only occurring upon conviction to include also the failure of the defendant to appear at a hearing or instances when the defendant faces an unvacated fine. This authority is also expanded to include final disposition of civil infractions. Appeal procedures are added for a person facing a license revocation or a privilege suspension.

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 which 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. In addition to 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.

Failing to comply with orders from a peace officer to identify one's self and provide one's address upon being detained for suspicion of a civil infraction is in itself made into a civil infraction.

**Appropriation:** None.

**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 (Agriculture & Natural Resources):**

(In support) The Senate changes to the bill that served as the House companion bill were acceptable.

(Opposed) None.

**Staff Summary of Public Testimony (General Government Appropriations & Oversight):**

(In support) In regards to ranking the WDFW felonies, they already exist in the code. During a workshop panel in front of this committee last year, the WDFW was asked to rank these so they were on the state sentencing grid. The WDFW believes it will actually save money. Sixteen crimes are decriminalized and made civil; therefore you are not going to have the court costs, filing fees, etc. The WDFW realizes the court rules change beginning July 2012, which is part of the reason why we have decriminalized some of the crimes in our code. The new crimes only apply to natural resource infractions, not everything in the code. It is not very often that a person who commits a fish and wildlife crime is placed in our state penitentiary. In regards to the identification requirement, a person currently needs a photo identification or driver's license to obtain a hunting or fishing license. All of the WDFW officers go through basic law enforcement academy and it is required by statute in Title 43, therefore this bill does not eliminate or change that.

The creation of the new misdemeanor on unlawful hunting is in response to private landowner and industry concern about the lack of teeth or enforcement capabilities against unlawful hunting. This bill takes a step forward to reinstate the importance of getting permission prior to hunting, and puts a penalty in place that is more than the cost of doing business. Under current law, if a person were to see a trophy animal in another person's pasture and kill it, the maximum penalty would be \$250 and the hunter could keep the game and gun. Under this law, the animal and gun must be forfeited and hunting privileges are revoked for three years.

(Opposed) The Washington Defender Association and the Washington Association of Criminal Defense Lawyers are concerned with the section creating a new misdemeanor should a person fail to produce identification during an infraction stop. That appears in the traffic code, but nowhere else in law. That expansion of authority does not seem warranted for someone who may not otherwise be carrying their identification when they are hunting or fishing on state land. Currently, if a person is hunting or fishing and is asked for identification, the person does not have to have state-issued identification but can instead sign their name and it has to match what is on their hunting or fishing license. This legislation changes that and does require being able to produce state-issued identification card or driver's license, but only after given notice of an infraction. The other provision of concern is striking the requirement that all enforcement officers go through the basic law enforcement academy. We do not feel they should be given increased authority and decreased training requirements should the bill go forward.

The identification requirement is a major change that is apparently generally applicable to officers that are not linked to the WDFW. The American Civil Liberties Union (ACLU) does a lot of work on police accountability and sees officers interact with individuals that are being disrespectful, which may end up in arrest. The individual is sent to the criminal justice system and it is unnecessary and avoidable. Adding the license requirement is not needed, goes too far, and will probably end up costing more in the long run. The ACLU also has concerns regarding the decreased training requirements – general authority peace officers should have the same training requirement as others.

**Persons Testifying** (Agriculture & Natural Resources): Bruce Bjork, Washington Department of Fish and Wildlife.

**Persons Testifying** (General Government Appropriations & Oversight): (In support) Bruce Bjork, Department of Fish and Wildlife; and Jack Field, Washington Cattlemen's Association.

(Opposed) Bob Cooper, Washington Defender Association and Washington Association of Criminal Defense Lawyers; and Shankar Narayan, American Civil Liberties Union.

**Persons Signed In To Testify But Not Testifying** (Agriculture & Natural Resources): None.

**Persons Signed In To Testify But Not Testifying** (General Government Appropriations & Oversight): None.