
HOUSE BILL 2260

State of Washington

65th Legislature

2018 Regular Session

By Representatives MacEwen and J. Walsh

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1 AN ACT Relating to prohibiting the spawning, incubation, and
2 cultivation of Atlantic salmon in the marine waters regulated by the
3 state; amending RCW 77.125.010, 15.85.020, 77.125.020, 77.125.030,
4 and 77.115.010; creating a new section; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** Pacific salmon represent a foundational
7 component of the economic, ecological, and cultural health of the
8 state of Washington and of the Pacific Northwest region. Pacific
9 salmon are also uniquely important to the commercial fishers and
10 Indian tribes of Washington state. Despite multiple recovery efforts
11 that have been underway for decades and that have cost hundreds of
12 millions of dollars, the Pacific salmon populations of Puget Sound
13 remain in danger, and multiple runs of Puget Sound Pacific salmon are
14 listed as threatened or endangered under the federal endangered
15 species act.

16 By contrast, Atlantic salmon are considered an aquatic invasive
17 species by the Washington department of fish and wildlife. During the
18 several decades that Atlantic salmon have been cultivated
19 commercially in the marine waters of this state, there have been at
20 least four instances in which significant numbers of Atlantic salmon
21 escaped into the wild, impacting tribal, state, and international

1 fisheries management. These escapements include escapes of
2 approximately one hundred seven thousand Atlantic salmon in 1996,
3 three hundred sixty-nine thousand Atlantic salmon in 1997, and one
4 hundred fifteen thousand Atlantic salmon in 1999. Despite increased
5 regulatory controls to address accidental releases of farmed Atlantic
6 salmon, including chapter 86, Laws of 2001, approximately one hundred
7 sixty thousand Atlantic salmon escaped from a marine aquaculture net
8 pen facility in 2017.

9 There have been reports that escaped Atlantic salmon have been
10 found with Pacific salmon fingerlings in their stomachs. Studies of
11 Atlantic salmon in British Columbia have shown instances of
12 colonization by Atlantic salmon in streams of British Columbia, and
13 in some instances in British Columbia, feral Atlantic salmon have
14 been reported to have successfully produced offspring. The
15 cultivation of farmed Atlantic salmon in Washington's marine waters
16 poses a risk of disease amplification and disease transmission.
17 Escaped farmed Atlantic salmon also pose a risk to native Pacific
18 salmon with regard to competition for resources, such as food and
19 habitat.

20 Where Washington's Pacific salmon populations remain in decline
21 in spite of significant recovery efforts, the legislature finds that
22 it is necessary to draw upon its police power to prohibit the
23 cultivation of Atlantic salmon in the marine waters regulated by the
24 state.

25 **Sec. 2.** RCW 77.125.010 and 2001 c 86 s 1 are each amended to
26 read as follows:

27 Marine aquaculture net pen facilities in Washington state have
28 accidentally released Atlantic salmon into Puget Sound. (~~It is~~
29 ~~necessary to minimize escapes through the implementation of statewide~~
30 ~~prevention measures~~) These accidental releases include escapes of
31 approximately one hundred seven thousand Atlantic salmon in 1996,
32 three hundred sixty-nine thousand Atlantic salmon in 1997, and one
33 hundred fifteen thousand Atlantic salmon in 1999. Despite increased
34 regulatory controls on commercial salmon farming in this state,
35 including chapter 86, Laws of 2001, approximately one hundred sixty
36 thousand Atlantic salmon escaped from a marine aquaculture net pen
37 facility in 2017. Because Atlantic salmon escapements have continued
38 in spite of efforts at increased regulatory controls, it is now
39 therefore unlawful to spawn, incubate, or cultivate Atlantic salmon

1 in the marine waters regulated by the state including, but not
2 limited to, Puget Sound, the Strait of Juan de Fuca, and Hood Canal.

3 **Sec. 3.** RCW 15.85.020 and 2003 c 39 s 7 are each amended to read
4 as follows:

5 (~~Unless the context clearly requires otherwise,~~) The
6 definitions in this section apply throughout this chapter unless the
7 context clearly requires otherwise.

8 (1) "Aquaculture" means the process of growing, farming, or
9 cultivating private sector cultured aquatic products in marine or
10 freshwaters and includes management by an aquatic farmer.

11 (2) "Aquatic farmer" is a private sector person who commercially
12 farms and manages the cultivating of private sector cultured aquatic
13 products on the person's own land or on land in which the person has
14 a present right of possession.

15 (3) "Private sector cultured aquatic products" are native,
16 nonnative, or hybrids of marine or freshwater plants and animals that
17 are propagated, farmed, or cultivated on aquatic farms under the
18 supervision and management of a private sector aquatic farmer or that
19 are naturally set on aquatic farms which at the time of setting are
20 under the active supervision and management of a private sector
21 aquatic farmer. When produced under such supervision and management,
22 private sector cultured aquatic products include, but are not limited
23 to, the following plants and animals:

	Scientific Name	Common Name
24		
25	Enteromorpha	green nori
26	Monostroma	awo-nori
27	Ulva	sea lettuce
28	Laminaria	konbu
29	Nereocystis	bull kelp
30	Porphyra	nori
31	Iridaea	
32	Haliotis	abalone
33	Zhlamys	pink scallop
34	Hinnites	rock scallop
35	Tatinopecten	Japanese or weathervane
36		scallop
37	Protothaca	native littleneck clam

1	Tapes	manila clam
2	Saxidomus	butter clam
3	Mytilus	mussels
4	Crassostrea	Pacific oysters
5	Ostrea	Olympia and European oysters
6	Pacifasticus	crayfish
7	Macrobrachium	freshwater prawn
8	((Salmo and))	trout ((;)) <u>and</u> char ((; and
9	Salvelinus	Atlantic salmon))
10	Oncorhynchus	salmon
11	Ictalurus	catfish
12	Cyprinus	carp
13	Acipenseridae	Sturgeon

14 Private sector cultured aquatic products do not include herring
15 spawn on kelp and other products harvested under a herring spawn on
16 kelp permit issued in accordance with RCW 77.70.210.

17 (4) "Department" means the department of agriculture.

18 (5) "Director" means the director of agriculture.

19 **Sec. 4.** RCW 77.125.020 and 2001 c 86 s 2 are each amended to
20 read as follows:

21 For the purposes of this chapter, "marine aquatic farming
22 location" means a complete complex that may be composed of various
23 marine enclosures, net pens, or other rearing vessels, food handling
24 facilities, or other facilities related to the rearing of ~~((Atlantic~~
25 ~~salmon or other))~~ finfish, other than Atlantic salmon, in marine
26 waters. A marine aquatic farming location is distinguished from the
27 individual facilities that collectively compose the location.

28 **Sec. 5.** RCW 77.125.030 and 2001 c 86 s 3 are each amended to
29 read as follows:

30 The director, in cooperation with the marine finfish aquatic
31 farmers, shall develop proposed rules for the implementation,
32 administration, and enforcement of marine finfish aquaculture
33 programs. In developing such proposed rules, the director must use a
34 negotiated rule-making process pursuant to RCW 34.05.310. The
35 proposed rules shall be submitted to the appropriate legislative
36 committees by January 1, 2002, to allow for legislative review of the

1 proposed rules. In the event that any such rules in effect as of the
2 effective date of this section authorize or provide for the spawning,
3 incubation, or cultivation of Atlantic salmon in the marine waters
4 that are regulated by the state, the director shall develop proposed
5 rules for the implementation, administration, and enforcement of
6 marine finfish aquaculture programs that do not authorize or provide
7 for the spawning, incubation, or cultivation of Atlantic salmon in
8 the marine waters that are regulated by the state. The proposed rules
9 shall include the following elements:

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

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

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

20 (a) Procedures for inspections of marine aquatic farming
21 locations on a regular basis to determine conformity with law and the
22 rules of the department relating to the operation of marine aquatic
23 farming locations; and

24 (b) Operating procedures at marine aquatic farming locations to
25 prevent the escape of marine finfish, to include the use of net
26 antifoulants;

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

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

33 ~~(6) ((Provisions for the development of an Atlantic salmon watch~~
34 ~~program similar to the one in operation in British Columbia, Canada.~~
35 ~~The program must provide for the monitoring of escapes of Atlantic~~
36 ~~salmon from marine aquatic farming locations, monitor the occurrence~~
37 ~~of naturally produced Atlantic salmon, determine the impact of~~
38 ~~Atlantic salmon on naturally produced and cultured finfish stocks,~~
39 ~~provide a focal point for consolidation of scientific information,~~
40 ~~and provide a forum for interaction and education of the public; and~~

1 ~~(7)~~) Provisions for the development of an education program to
2 assist marine aquatic farmers so that they operate in an
3 environmentally sound manner.

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

6 (1) The director of agriculture and the director shall jointly
7 develop a program of disease inspection and control for aquatic
8 farmers as defined in RCW 15.85.020. The program shall be
9 administered by the department under rules established under this
10 section. The purpose of the program is to protect the aquaculture
11 industry and wildstock fisheries from a loss of productivity due to
12 aquatic diseases or maladies. As used in this section "diseases"
13 means, in addition to its ordinary meaning, infestations of parasites
14 or pests. The disease program may include, but is not limited to, the
15 following elements:

- 16 (a) Disease diagnosis;
- 17 (b) Import and transfer requirements;
- 18 (c) Provision for certification of stocks;
- 19 (d) Classification of diseases by severity;
- 20 (e) Provision for treatment of selected high-risk diseases;
- 21 (f) Provision for containment and eradication of high-risk
22 diseases;
- 23 (g) Provision for destruction of diseased cultured aquatic
24 products;
- 25 (h) Provision for quarantine of diseased cultured aquatic
26 products;
- 27 (i) Provision for coordination with state and federal agencies;
- 28 (j) Provision for development of preventative or control
29 measures;
- 30 (k) Provision for cooperative consultation service to aquatic
31 farmers; and

32 (1) Provision for disease history records.

33 (2) The commission shall adopt rules implementing this section.
34 However, such rules shall have the prior approval of the director of
35 agriculture and shall provide therein that the director of
36 agriculture has provided such approval. The director of agriculture
37 or the director's designee shall attend the rule-making hearings
38 conducted under chapter 34.05 RCW and shall assist in conducting
39 those hearings. The authorities granted the department by these rules

1 and by RCW 77.12.047(1)(g), 77.60.060, 77.60.080, 77.65.210,
2 (~~77.115.020,~~) 77.115.030, and 77.115.040 constitute the only
3 authorities of the department to regulate private sector cultured
4 aquatic products and aquatic farmers as defined in RCW 15.85.020.
5 Except as provided in subsection (3) of this section, no action may
6 be taken against any person to enforce these rules unless the
7 department has first provided the person an opportunity for a
8 hearing. In such a case, if the hearing is requested, no enforcement
9 action may be taken before the conclusion of that hearing.

10 (3) The rules adopted under this section shall specify the
11 emergency enforcement actions that may be taken by the department,
12 and the circumstances under which they may be taken, without first
13 providing the affected party with an opportunity for a hearing.
14 Neither the provisions of this subsection nor the provisions of
15 subsection (2) of this section shall preclude the department from
16 requesting the initiation of criminal proceedings for violations of
17 the disease inspection and control rules.

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

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

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

27 (7) In the event that any rules adopted pursuant to this section
28 in effect as of the effective date of this section authorize or
29 provide for the spawning, incubation, or cultivation of Atlantic
30 salmon in the marine waters that are regulated by the state, the
31 director shall develop proposed rules pursuant to this section that
32 do not authorize or provide for the spawning, incubation, or
33 cultivation of Atlantic salmon in the marine waters that are
34 regulated by the state.

35 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
36 preservation of the public peace, health, or safety, or support of

1 the state government and its existing public institutions, and takes
2 effect immediately.

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