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HOUSE BILL 2418

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State of Washington

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By Representatives Lytton, Chapman, Sawyer, Blake, Tarleton, Cody, Tharinger, Robinson, Peterson, Fitzgibbon, Morris, Dolan, Frame, Orwall, Kilduff, Stanford, Macri, Jenkins, Ryu, Ormsby, Doglio, Pollet, and Ortiz-Self

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1 AN ACT Relating to reducing impacts of nonnative finfish  
2 aquaculture by delaying construction of new nonnative finfish  
3 aquaculture facilities until thorough study, including structural  
4 analysis of existing facilities, is complete; amending RCW 77.125.010  
5 and 77.125.030; adding a new section to chapter 77.125 RCW; creating  
6 a new section; and declaring an emergency.

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

8 **Sec. 1.** RCW 77.125.010 and 2001 c 86 s 1 are each amended to  
9 read as follows:

10 Marine aquaculture net pen facilities in Washington state have  
11 accidentally released Atlantic salmon into Puget Sound on multiple  
12 occasions in recent years. The most recent incident, in August 2017,  
13 resulted in a release of approximately one hundred sixty thousand  
14 nonnative Atlantic salmon into Puget Sound. It is necessary to ensure  
15 that the state's regulatory requirements are sufficient to  
16 ((minimize)) eliminate escapes through the implementation of  
17 statewide prevention measures.

18 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.125  
19 RCW to read as follows:

1 (1) The departments of natural resources, fish and wildlife, and  
2 ecology shall cooperatively conduct a detailed review of permitting  
3 and lease requirements for Atlantic salmon or other nonnative marine  
4 finfish aquaculture in Washington. The departments shall report the  
5 results of the review, consistent with RCW 43.01.036, to the  
6 appropriate committees of the legislature by October 31, 2018. At a  
7 minimum, the report must cover:

8 (a) A summary of each permitting requirement necessary for  
9 Atlantic salmon or other nonnative marine finfish aquaculture in  
10 Washington waters and all insurance, inspection, and safety  
11 requirements associated with each existing permit;

12 (b) How each permit ensures that Atlantic salmon or other  
13 nonnative marine finfish aquaculture activities are conducted in a  
14 manner that prevents negative impacts to the health and safety of  
15 Washington waters and marine ecosystems, Pacific salmon health and  
16 habitat, and tribal treaty fishing rights;

17 (c) A review of the department of natural resources' aquatic  
18 lands lease program as it applies to leases for Atlantic salmon or  
19 other nonnative marine finfish aquaculture, including:

20 (i) All insurance, inspection, and safety requirements associated  
21 with each existing lease in order to use leased public land for  
22 Atlantic salmon or other nonnative marine finfish aquaculture; and

23 (ii) How each insurance, inspection, and safety requirement  
24 protects the health and safety of Washington waters and marine  
25 ecosystems, Pacific salmon health and habitat, and tribal treaty  
26 fishing rights; and

27 (d) Certification from the director of ecology, fish and wildlife  
28 commission, and board of natural resources declaring whether or not  
29 state leasing and permitting requirements are sufficient to prevent  
30 negative impacts to the health and safety of Washington waters and  
31 marine ecosystems, Pacific salmon health and habitat, and tribal  
32 treaty fishing rights that may result from Atlantic salmon or other  
33 nonnative marine finfish aquaculture.

34 (2) No new net pen facilities for the cultivation of Atlantic  
35 salmon or other nonnative marine finfish may be constructed in  
36 Washington waters until July 1, 2020. After July 1, 2020, new  
37 facilities may be constructed only if:

38 (a) Rules requiring inspections of net pen facilities used for  
39 the rearing of Atlantic salmon or other nonnative marine finfish  
40 species are adopted pursuant to RCW 77.125.030;

1 (b) The reviews under this section and section 4 of this act are  
2 completed; and

3 (c) The departments of ecology, fish and wildlife, and natural  
4 resources certify, pursuant to subsection (1)(d) of this section,  
5 that there are no negative impacts to the health and safety of  
6 Washington waters and marine ecosystems, Pacific salmon health and  
7 habitat, and tribal treaty fishing rights that may result from  
8 Atlantic salmon or other nonnative marine finfish aquaculture. This  
9 subsection (2) does not apply to repairs or improvements to existing  
10 net pen facilities necessary to remain in compliance with existing  
11 permitting and lease requirements.

12 (3) The department of natural resources may not enter into any  
13 new or renew any existing aquatic lands leases authorized under RCW  
14 79.135.150 for the propagation, farming, or cultivation of Atlantic  
15 salmon or other nonnative marine finfish species until July 1, 2020.  
16 After July 1, 2020, the department of natural resources may enter  
17 into new or renew existing leases only if:

18 (a) Rules requiring inspections of net pen facilities used for  
19 the rearing of Atlantic salmon or other nonnative marine finfish  
20 species are adopted pursuant to RCW 77.125.030;

21 (b) The reviews under this section and section 4 of this act are  
22 completed; and

23 (c) The departments of ecology, fish and wildlife, and natural  
24 resources certify, pursuant to subsection (1)(d) of this section,  
25 that there are no negative impacts to the health and safety of  
26 Washington waters and marine ecosystems, Pacific salmon health and  
27 habitat, and tribal treaty fishing rights that may result from  
28 Atlantic salmon or other nonnative marine finfish aquaculture.

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

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

1 (1) Provisions for the prevention of escapes of cultured marine  
2 finfish aquaculture products from enclosures, net pens, or other  
3 rearing vessels.

4 (a) The provisions must require an inspection of any net pens  
5 used for the rearing of Atlantic salmon or other nonnative marine  
6 finfish. The inspection must be commissioned by the finfish farming  
7 operator, must occur no less frequently than every two years, and  
8 must cover the entire farm infrastructure, including all subsurface  
9 components. The finfish farming operator is responsible for the costs  
10 of the inspection. The inspection must be conducted by a marine  
11 engineering firm with expertise in marine finfish aquatic farming  
12 facilities. The marine engineering firm must be:

13 (i) Approved by the department in consultation with the  
14 department of natural resources; and

15 (ii) Certified to practice engineering in the state of  
16 Washington.

17 (b) The inspection must address the following elements related to  
18 the prevention of escapes from enclosures, net pens, or other rearing  
19 vessels:

20 (i) The operation and maintenance of the facilities using best  
21 engineering practices;

22 (ii) The structural integrity of the facilities; and

23 (iii) Compliance with the appropriate permitting requirements of  
24 the department and the department of ecology, and any terms and  
25 conditions of operational or structural integrity of any lease held  
26 by an agency of the state for the facility;

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

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

34 (a) Procedures for inspections of marine aquatic farming  
35 locations on a regular basis to determine conformity with law and the  
36 rules of the department relating to the operation of marine aquatic  
37 farming locations; and

38 (b) Operating procedures at marine aquatic farming locations to  
39 prevent the escape of marine finfish, to include the use of net  
40 antifoulants;

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

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

7 (6) Provisions for the development of an Atlantic salmon watch  
8 program similar to the one in operation in British Columbia, Canada.  
9 The program must provide for the monitoring of escapes of Atlantic  
10 salmon from marine aquatic farming locations, monitor the occurrence  
11 of naturally produced Atlantic salmon, determine the impact of  
12 Atlantic salmon on naturally produced and cultured finfish stocks,  
13 provide a focal point for consolidation of scientific information,  
14 and provide a forum for interaction and education of the public;  
15 ((and))

16 (7) Provisions for the development of an education program to  
17 assist marine aquatic farmers so that they operate in an  
18 environmentally sound manner; and

19 (8)(a) Rules to implement this section must be adopted by  
20 December 31, 2018. Except as provided in (b) of this subsection, the  
21 department and the department of ecology may not issue new permits or  
22 renew any existing permits related to Atlantic salmon or other  
23 nonnative marine finfish aquaculture until rules have been adopted to  
24 implement this act and inspections required under this act are  
25 concluded.

26 (b) The department may consider permits for the transport of  
27 Atlantic salmon or other nonnative marine finfish aquaculture  
28 products under WAC 220-370-190 as it existed on the effective date of  
29 this section.

30 NEW SECTION. Sec. 4. The University of Washington school of  
31 aquatic and fishery sciences, in cooperation with Western Washington  
32 University and Washington State University shall conduct a detailed  
33 analysis of nonnative finfish aquaculture in Washington. The analysis  
34 must include freshwater and upland aquaculture in addition to marine  
35 aquaculture. The University of Washington shall invite consultation  
36 and participation from the Northwest Indian fisheries commission and  
37 the Northwest Indian College. By December 1, 2018, the analysis must  
38 be submitted consistent with RCW 43.01.036 to the appropriate  
39 committees of the legislature, the fish and wildlife commission, the

1 board of natural resources, the invasive species council, and the  
2 Northwest Indian fisheries commission. At a minimum, the study must  
3 include:

4 (1) A timeline of nonnative finfish aquaculture in Washington and  
5 associated legislation;

6 (2) Previous escapes in Washington waters and resulting impacts  
7 to native species;

8 (3) An analysis of finfish aquaculture in other states,  
9 countries, or provinces, and impacts of and regulatory responses to  
10 escapes of nonnative finfish species;

11 (4) An analysis of potential impacts to native species resulting  
12 from competition for resources, such as food sources and habitat,  
13 from escaped nonnative finfish;

14 (5) Potential genetic consequences of nonnative finfish species  
15 interbreeding with native finfish species; and

16 (6) Recommendations on how to balance the benefits and negative  
17 consequences of nonnative finish aquaculture in a way that  
18 prioritizes the health of native aquatic species.

19 NEW SECTION. **Sec. 5.** If any provision of this act or its  
20 application to any person or circumstance is held invalid, the  
21 remainder of the act or the application of the provision to other  
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
24 preservation of the public peace, health, or safety, or support of  
25 the state government and its existing public institutions, and takes  
26 effect immediately.

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