

Chapter 77.04 RCW
DEPARTMENT OF FISH AND WILDLIFE

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RCW 77.04.010 Short title. This title is known and may be cited as "Fish and Wildlife Code of the State of Washington." [2000 c 107 s 201; 1990 c 84 s 1; 1980 c 78 s 2; 1955 c 36 s 77.04.010. Prior: 1947 c 275 s 1; Rem. Supp. 1947 s 5992-11.]

Effective date—1980 c 78: "This act shall take effect on July 1, 1981." [1980 c 78 s 137.]

Intent, construction—1980 c 78: "In enacting this 1980 act, it is the intent of the legislature to revise and reorganize the game code of this state to clarify and improve the administration of the state's game laws. Unless the context clearly requires otherwise, the revisions made to the game code by this act are not to be construed as substantive." [1980 c 78 s 1.]

Savings—1980 c 78: "This act shall not have the effect of terminating or in any way modifying any proceeding or liability, civil or criminal, which exists on the effective date of this act." [1980 c 78 s 138.]

Severability—1980 c 78: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 78 s 139.]

RCW 77.04.012 Mandate of department and commission. Wildlife, fish, and shellfish are the property of the state. The commission, director, and the department shall preserve, protect, perpetuate, and manage the wildlife and food fish, game fish, and shellfish in state waters and offshore waters.

The department shall conserve the wildlife and food fish, game fish, and shellfish resources in a manner that does not impair the resource. In a manner consistent with this goal, the department shall seek to maintain the economic well-being and stability of the fishing industry in the state. The department shall promote orderly fisheries and shall enhance and improve recreational and commercial fishing in this state.

The commission may authorize the taking of wildlife, food fish, game fish, and shellfish only at times or places, or in manners or quantities, as in the judgment of the commission does not impair the supply of these resources.

The commission shall attempt to maximize the public recreational game fishing and hunting opportunities of all citizens, including juvenile, disabled, and senior citizens.

Recognizing that the management of our state wildlife, food fish, game fish, and shellfish resources depends heavily on the assistance of volunteers, the department shall work cooperatively with volunteer groups and individuals to achieve the goals of this title to the greatest extent possible.

Nothing in this title shall be construed to infringe on the right of a private property owner to control the owner's private property. [2000 c 107 s 2; 1983 1st ex.s. c 46 s 5; 1975 1st ex.s. c 183 s 1; 1949 c 112 s 3, part; Rem. Supp. 1949 s 5780-201, part. Formerly RCW 75.08.012, 43.25.020.]

State policy regarding improvement of recreational salmon fishing: See note following RCW 77.65.150.

RCW 77.04.013 Findings and intent. The legislature supports the recommendations of the state fish and wildlife commission with regard to the commission's responsibilities in the merged department of fish and wildlife. It is the intent of the legislature that, beginning July 1, 1996, the commission assume regulatory authority for food fish and shellfish in addition to its existing authority for game fish and wildlife. It is also the intent of the legislature to provide to the commission the authority to review and approve department agreements, to review and approve the department's budget proposals, to adopt rules for the department, and to select commission staff and the director of the department.

The legislature finds that all fish, shellfish, and wildlife species should be managed under a single comprehensive set of goals, policies, and objectives, and that the decision-making authority should rest with the fish and wildlife commission. The commission acts in an open and deliberative process that encourages public involvement and increases public confidence in department decision making. [1995 1st sp.s. c 2 s 1 (Referendum Bill No. 45, approved November 7, 1995). Formerly RCW 75.08.013.]

Referral to electorate—1995 1st sp.s. c 2: "This act shall be submitted to the people for their adoption and ratification, or

rejection, at the next succeeding general election to be held in this state, in accordance with Article II, section 1 of the state Constitution, as amended, and the laws adopted to facilitate the operation thereof." [1995 1st sp.s. c 2 s 46.] Referendum Bill No. 45 was approved by the electorate at the November 7, 1995, election.

RCW 77.04.020 Composition of department—Powers and duties. The department consists of the state fish and wildlife commission and the director. The commission may delegate to the director any of the powers and duties vested in the commission. [2000 c 107 s 202; 1996 c 267 s 32; 1993 sp.s. c 2 s 59; 1987 c 506 s 4; 1980 c 78 s 3; 1955 c 36 s 77.04.020. Prior: 1947 c 275 s 2; Rem. Supp. 1947 s 5992-12.]

Intent—Effective date—1996 c 267: See notes following RCW 77.12.177.

Effective date—1993 sp.s. c 2 ss 1-6, 8-59, and 61-79: See RCW 43.300.900.

Legislative findings and intent—1987 c 506: "Washington's fish and wildlife resources are the responsibility of all residents of the state. We all benefit economically, recreationally, and aesthetically from these resources. Recognizing the state's changing environment, the legislature intends to continue to provide opportunities for the people to appreciate wildlife in its native habitat. However, the wildlife management in the state of Washington shall not cause a reduction of recreational opportunity for hunting and fishing activities. The paramount responsibility of the department remains to preserve, protect, and perpetuate all wildlife species. Adequate funding for proper management, now and for future generations, is the responsibility of everyone.

The intent of the legislature is: (1) To allow the governor to select the director of wildlife; (2) to retain the authority of the wildlife commission to establish the goals and objectives of the department; (3) to insure a high level of public involvement in the decision-making process; (4) to provide effective communications among the commission, the governor, the legislature, and the public; (5) to expand the scope of appropriate funding for the management, conservation, and enhancement of wildlife; (6) to not increase the cost of license, tag, stamp, permit, and punch card fees prior to January 1, 1990; and (7) for the commission to carry out any other responsibilities prescribed by the legislature in this title." [1987 c 506 s 1.]

References—1987 c 506: "All references in the Revised Code of Washington to the department of game, the game commission, the director of game, and the game fund shall mean, respectively, the department of wildlife, the wildlife commission, the director of wildlife, and the wildlife fund." [1987 c 506 s 99.]

Continuation of rules, director, game commission—1987 c 506: "Rules of the department of game existing prior to July 26, 1987, shall remain in effect unless or until amended or repealed by the director of wildlife or the wildlife commission pursuant to Title 77 RCW. The director of game on July 26, 1987, shall continue as the

director of wildlife until resignation or removal in accordance with the provisions of RCW 43.17.020. The game commission on July 26, 1987, shall continue as the wildlife commission." [1987 c 506 s 100.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

RCW 77.04.030 Commission—Appointment. The fish and wildlife commission consists of nine registered voters of the state. In January of each odd-numbered year, the governor shall appoint with the advice and consent of the senate three registered voters to the commission to serve for terms of six years from that January or until their successors are appointed and qualified. If a vacancy occurs on the commission prior to the expiration of a term, the governor shall appoint a registered voter within sixty days to complete the term. Three members shall be residents of that portion of the state lying east of the summit of the Cascade mountains, and three shall be residents of that portion of the state lying west of the summit of the Cascade mountains. Three additional members shall be appointed at large. No two members may be residents of the same county. The legal office of the commission is at the administrative office of the department in Olympia. [2001 c 155 s 1; 2000 c 107 s 203; 1994 c 264 s 52; 1993 sp.s. c 2 s 60; 1987 c 506 s 5; 1981 c 338 s 11; 1980 c 78 s 4; 1955 c 36 s 77.04.030. Prior: 1947 c 275 s 3; Rem. Supp. 1947 s 5992-13.]

Effective date—1993 sp.s. c 2 ss 7, 60, 80, and 82-100: "Sections 7, 60, 80, and 82 through 100 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 sp.s. c 2 s 105. Formerly RCW 75.54.900.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

RCW 77.04.040 Commission—Qualifications of members. Persons eligible for appointment as members of the commission shall have general knowledge of the habits and distribution of fish and wildlife and shall not hold another state, county, or municipal elective or appointive office. In making these appointments, the governor shall seek to maintain a balance reflecting all aspects of fish and wildlife, including representation recommended by organized groups representing sportfishers, commercial fishers, hunters, private landowners, and environmentalists. Persons eligible for appointment as fish and wildlife commissioners shall comply with the provisions of chapters 42.52 and *42.17 RCW. [1995 1st sp.s. c 2 s 3 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 s 61; 1987 c 506 s 6; 1980 c 78 s 5; 1955 c 36 s 77.04.040. Prior: 1947 c 275 s 4; Rem. Supp. 1947 s 5992-14.]

***Reviser's note:** Provisions in chapter 42.17 RCW relating to public disclosure were recodified in chapter 42.56 RCW by 2005 c 274.

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 77.04.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 ss 1-6, 8-59, and 61-79: See RCW 43.300.900.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

RCW 77.04.055 Commission—Duties. (1) In establishing policies to preserve, protect, and perpetuate wildlife, fish, and wildlife and fish habitat, the commission shall meet annually with the governor to:

(a) Review and prescribe basic goals and objectives related to those policies; and

(b) Review the performance of the department in implementing fish and wildlife policies.

The commission shall maximize fishing, hunting, and outdoor recreational opportunities compatible with healthy and diverse fish and wildlife populations.

(2) The commission shall establish hunting, trapping, and fishing seasons and prescribe the time, place, manner, and methods that may be used to harvest or enjoy game fish and wildlife.

(3) The commission shall establish provisions regulating food fish and shellfish as provided in RCW 77.12.047.

(4) The commission shall have final approval authority for tribal, interstate, international, and any other department agreements relating to fish and wildlife.

(5) The commission shall adopt rules to implement the state's fish and wildlife laws.

(6) The commission shall have final approval authority for the department's budget proposals.

(7) The commission shall select its own staff and shall appoint the director of the department. The director and commission staff shall serve at the pleasure of the commission. [2000 c 107 s 204; 1995 1st sp.s. c 2 s 4 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 s 62; 1990 c 84 s 2; 1987 c 506 s 7.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 77.04.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 ss 1-6, 8-59, and 61-79: See RCW 43.300.900.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

RCW 77.04.060 Commission—Meetings—Officers—Compensation, travel expenses. The commission shall hold at least one regular meeting during the first two months of each calendar quarter, and special meetings when called by the chair and by five members. Five members constitute a quorum for the transaction of business.

The commission at a meeting in each odd-numbered year shall elect one of its members as chair and another member as vice chair, each of whom shall serve for a term of two years or until a successor is elected and qualified.

Members of the commission shall be compensated in accordance with RCW 43.03.250. In addition, members are allowed their travel expenses incurred while absent from their usual places of residence in accordance with RCW 43.03.050 and 43.03.060. [2013 c 23 s 238; 1993 sp.s. c 2 s 63. Prior: 1987 c 506 s 8; 1987 c 114 s 1; 1984 c 287 s 110; 1980 c 78 s 6; 1977 c 75 s 89; 1975-'76 2nd ex.s. c 34 s 175; 1961 c 307 s 9; 1955 c 352 s 1; 1955 c 36 s 77.04.060; prior: 1949 c 205 s 1; 1947 c 275 s 6; Rem. Supp. 1949 s 5992-16.]

Effective date—1993 sp.s. c 2 ss 1-6, 8-59, and 61-79: See RCW 43.300.900.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

RCW 77.04.080 Director—Qualifications—Duties—Salary. Persons eligible for appointment as director shall have practical knowledge of the habits and distribution of fish and wildlife. The director shall supervise the administration and operation of the department and perform the duties prescribed by law and delegated by the commission. The director shall carry out the basic goals and objectives prescribed under RCW 77.04.055. The director may appoint and employ necessary personnel. The director may delegate, in writing, to department personnel the duties and powers necessary for efficient operation and administration of the department.

Only persons having general knowledge of the fisheries and wildlife resources and of the commercial and recreational fishing industry in this state are eligible for appointment as director. The director shall not have a financial interest in the fishing industry or a directly related industry. The director shall receive the salary fixed by the governor under RCW 43.03.040.

The director is the ex officio secretary of the commission and shall attend its meetings and keep a record of its business. [2000 c

107 s 205; 1995 1st sp.s. c 2 s 5 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 s 64; 1987 c 506 s 9; 1980 c 78 s 8; 1955 c 36 s 77.04.080. Prior: 1947 c 275 s 8; Rem. Supp. 1947 s 5992-18.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 77.04.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 ss 1-6, 8-59, and 61-79: See RCW 43.300.900.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

RCW 77.04.090 Rule-making authority—Certified copy as evidence. The commission shall adopt permanent rules and amendments to or repeals of existing rules by approval of a majority of the members by resolution, entered and recorded in the minutes of the commission: PROVIDED, That the commission may not adopt rules after July 23, 1995, that are based solely on a section of law stating a statute's intent or purpose, on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt any rule. The commission shall adopt emergency rules by approval of a majority of the members. The commission, when adopting emergency rules under RCW 77.12.150, shall adopt rules in conformance with chapter 34.05 RCW. Judicial notice shall be taken of the rules filed and published as provided in RCW 34.05.380 and 34.05.210.

A copy of an emergency rule, certified as a true copy by a member of the commission, the director, or by a person authorized in writing by the director to make the certification, is admissible in court as prima facie evidence of the adoption and validity of the rule. [1996 c 267 s 35; 1995 c 403 s 111; 1984 c 240 s 1; 1980 c 78 s 16; 1955 c 36 s 77.12.050. Prior: 1947 c 275 s 15; Rem. Supp. 1947 s 5992-25. Formerly RCW 77.12.050.]

Intent—Effective date—1996 c 267: See notes following RCW 77.12.177.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

RCW 77.04.120 Director—Research—Reports. (1) The director shall investigate the habits, supply, and economic use of food fish and shellfish in state and offshore waters.

(2) The director shall make an annual report to the governor on the operation of the department and the statistics of the fishing industry.

(3) Subject to RCW 40.07.040, the director shall provide a comprehensive biennial report of all departmental operations to the chairs of the committees on natural resources of the senate and house of representatives, the senate ways and means committee, and the house of representatives appropriations committee, including one copy to the staff of each of the committees, to reflect the previous fiscal period. The format of the report shall be similar to reports issued by the department from 1964-1970 and the report shall include, but not be limited to, descriptions of all department activities including: Revenues generated, program costs, capital expenditures, personnel, special projects, new and ongoing research, environmental controls, cooperative projects, intergovernmental agreements, and outlines of ongoing litigation, recent court decisions and orders on major issues with the potential for state liability. The report shall describe the status of the resource and its recreational, commercial, and tribal utilization. The report shall be made available to the public. [2000 c 107 s 3; 1988 c 36 s 31; 1987 c 505 s 71; 1985 c 208 s 1; 1985 c 93 s 1; 1983 1st ex.s. c 46 s 7; 1977 c 75 s 87; 1955 c 12 s 75.08.020. Prior: 1949 c 112 s 7(3), (6), (7); Rem. Supp. 1949 s 5780-206 (3), (6), (7). Formerly RCW 75.08.020.]

Director of fish and wildlife to develop proposals to reinstate salmon and steelhead in Tilton and Cowlitz rivers: RCW 77.12.765.

RCW 77.04.130 Adoption and certification of rules. (1) Rules of the commission shall be adopted by the commission or a designee in accordance with chapter 34.05 RCW.

(2) Rules of the commission shall be admitted as evidence in the courts of the state when accompanied by an affidavit from the commission or a designee certifying that the rule has been lawfully adopted and the affidavit is prima facie evidence of the adoption of the rule.

(3) The commission may designate department employees to act on the commission's behalf in the adoption and certification of rules. [1995 1st sp.s. c 2 s 12 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 s 16; 1973 c 93 s 1; 1955 c 12 s 75.08.090. Prior: 1949 c 112 s 6, part; Rem. Supp. 1949 s 5780-205, part. Formerly RCW 75.08.090.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 77.04.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

RCW 77.04.140 Unofficial printings of laws or rules—Approval required. Provisions of this title or rules of the commission shall not be printed in a pamphlet unless the pamphlet is clearly marked as an unofficial version. This section does not apply to printings approved by the commission. [1995 1st sp.s. c 2 s 13 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 s 17; 1955 c

12 s 75.08.110. Prior: 1949 c 112 s 16; Rem. Supp. 1949 s 5780-215. Formerly RCW 75.08.110.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 77.04.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

RCW 77.04.145 Notification requirements. Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 s 7.]

Finding—Intent—Severability—2007 c 62: See notes following RCW 43.17.400.

RCW 77.04.150 Hunters and fishers with disabilities—Advisory committee—Composition—Terms—Pilot project—Report to the legislature. (1) The commission must appoint an advisory committee to generally represent the interests of hunters and fishers with disabilities on matters including, but not limited to, special hunts, modified sporting equipment, access to public land, and hunting and fishing opportunities. The advisory committee is composed of seven members, each being an individual with a disability. Two additional members, who have demonstrable experience working with disabled persons in a natural resource environment, may be appointed to the advisory committee. The advisory committee members must represent the entire state. The members must be appointed so that each of the six department administrative regions, as they existed on January 1, 2007, are represented with one resident on the advisory committee. One additional member must be appointed at large. The chair of the advisory committee must be a member of the advisory committee and shall be selected by the members of the advisory committee.

(2) The members of the advisory committee are appointed for a four-year term. If a vacancy occurs on the advisory committee prior to the expiration of a term, the commission must appoint a replacement within sixty days to complete the term.

(3) The advisory committee must meet at least semiannually, and may meet at other times as requested by a majority of the advisory committee members for any express purpose that directly relates to the duties set forth in subsection (1) of this section. A majority of members currently serving on the advisory committee constitutes a quorum. The department must provide staff support for all official advisory committee meetings.

(4) Each member of the advisory committee shall serve without compensation but may be reimbursed for travel expenses as authorized in RCW 43.03.050 and 43.03.060.

(5) The members of the advisory committee, or individuals acting on their behalf, are immune from civil liability for official acts performed in the course of their duties.

(6) At least once every two years, by December 1st, the commission shall present a concise report to the appropriate legislative committees detailing the levels of participation in hunting and fishing by persons with disabilities, and any

recommendations to maintain accessibility for persons with disabilities. [2022 c 21 s 1; 2008 c 294 s 1; 2005 c 149 s 1; 2001 c 312 s 1.]

RCW 77.04.160 Surplus salmon report. (1) The department shall prepare an annual surplus salmon report. This report shall include the disposition of adult salmonids that have returned to salmonid hatchery facilities operated under the jurisdiction of the state that:

- (a) Have not been harvested; and
- (b) Were not allowed to escape for natural spawning.

(2) The report shall include, by species, the number and estimated weight of surplus salmon and steelhead and a description of the disposition of the adult carcasses including, but not limited to, the following categories:

- (a) Disposed in landfills;
- (b) Transferred to another government agency for reproductive purposes;
- (c) Sold to contract buyers in the round;
- (d) Sold to contract buyers after spawning;
- (e) Transferred to Native American tribes;
- (f) Donated to food banks; and
- (g) Used in stream nutrient enrichment programs.

(3) The report shall also include, by species, information on the number of requests for viable salmon eggs, the number of these requests that were granted and the number that were denied, the geographic areas for which these requests were granted or denied, and a brief explanation given for each denial of a request for viable salmon eggs.

(4) The report shall be included in the biennial state of the salmon report required by *RCW 77.85.020 and other similar state reports on salmon.

(5) The report shall include an assessment of the infrastructure needs and facility modifications necessary to implement chapter 337, Laws of 2001. [2001 c 337 s 5.]

***Reviser's note:** RCW 77.85.020 was amended by 2009 c 345 s 4, deleting the biennial state of the salmon report. RCW 77.85.020 now directs the recreation and conservation office to produce a biennial report.

RCW 77.04.170 Funding for fish stock protection or recovery programs—Prioritization and selection process requirements—Development of outcome-focused performance measures. In administering programs funded with moneys from the capital budget related to protection or recovery of fish stocks, the department shall incorporate the environmental benefits of a project into its prioritization and selection process. The department shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the program. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The department shall consult with affected interest groups in implementing this section. [2001 c 227 s 11.]

Findings—Intent—2001 c 227: See note following RCW 43.41.270.