

2 **ESHB 2793** - S COMM AMD  
3 By Committee on Natural Resources

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. **Sec. 1.** It is the intent of this legislation to  
8 begin to make the statutory changes required by the fish and wildlife  
9 commission in order to successfully implement Referendum Bill No. 45.

10 **Sec. 2.** RCW 75.08.011 and 1995 1st sp.s. c 2 s 6 (Referendum Bill  
11 No. 45) are each amended to read as follows:

12 As used in this title or rules of the (~~director~~) department,  
13 unless the context clearly requires otherwise:

14 (1) "Commission" means the fish and wildlife commission.

15 (2) "Director" means the director of fish and wildlife.

16 (3) "Department" means the department of fish and wildlife.

17 (4) "Person" means an individual or a public or private entity or  
18 organization. The term "person" includes local, state, and federal  
19 government agencies, and all business organizations, including  
20 corporations and partnerships.

21 (5) "Fisheries patrol officer" means a person appointed and  
22 commissioned by the commission, with authority to enforce this title,  
23 rules of the (~~director~~) department, and other statutes as prescribed  
24 by the legislature. Fisheries patrol officers are peace officers.

25 (6) "Ex officio fisheries patrol officer" means a commissioned  
26 officer of a municipal, county, state, or federal agency having as its  
27 primary function the enforcement of criminal laws in general, while the  
28 officer is in the appropriate jurisdiction. The term "ex officio  
29 fisheries patrol officer" also includes wildlife agents, special agents  
30 of the national marine fisheries service, United States fish and  
31 wildlife special agents, state parks commissioned officers, department  
32 of natural resources enforcement officers, and United States forest  
33 service officers, while the agents and officers are within their  
34 respective jurisdictions.

1 (7) "To fish," "to harvest," and "to take" and their derivatives  
2 mean an effort to kill, injure, harass, or catch food fish or  
3 shellfish.

4 (8) "State waters" means all marine waters and fresh waters within  
5 ordinary high water lines and within the territorial boundaries of the  
6 state.

7 (9) "Offshore waters" means marine waters of the Pacific Ocean  
8 outside the territorial boundaries of the state, including the marine  
9 waters of other states and countries.

10 (10) "Concurrent waters of the Columbia river" means those waters  
11 of the Columbia river that coincide with the Washington-Oregon state  
12 boundary.

13 (11) "Resident" means a person who has maintained a permanent place  
14 of abode within the state for at least ninety days immediately  
15 preceding an application for a license, has established by formal  
16 evidence an intent to continue residing within the state, and who is  
17 not licensed to hunt or fish as a resident in another state.

18 (12) "Nonresident" means a person who has not fulfilled the  
19 qualifications of a resident.

20 (13) "Food fish" means those species of the classes Osteichthyes,  
21 Agnatha, and Chondrichthyes that have been classified and that shall  
22 not be fished for except as authorized by rule of the commission. The  
23 term "food fish" includes all stages of development and the bodily  
24 parts of food fish species.

25 (14) "Shellfish" means those species of marine and freshwater  
26 invertebrates that have been classified and that shall not be taken  
27 except as authorized by rule of the commission. The term "shellfish"  
28 includes all stages of development and the bodily parts of shellfish  
29 species.

30 (15) "Salmon" means all species of the genus *Oncorhynchus*, except  
31 those classified as game fish in Title 77 RCW, and includes:

32	Scientific Name	Common Name
33	<i>Oncorhynchus tshawytscha</i>	Chinook salmon
34	<i>Oncorhynchus kisutch</i>	Coho salmon
35	<i>Oncorhynchus keta</i>	Chum salmon
36	<i>Oncorhynchus gorbuscha</i>	Pink salmon
37	<i>Oncorhynchus nerka</i>	Sockeye salmon

1 (16) "Commercial" means related to or connected with buying,  
2 selling, or bartering. Fishing for food fish or shellfish with gear  
3 unlawful for fishing for personal use, or possessing food fish or  
4 shellfish in excess of the limits permitted for personal use are  
5 commercial activities.

6 (17) "To process" and its derivatives mean preparing or preserving  
7 food fish or shellfish.

8 (18) "Personal use" means for the private use of the individual  
9 taking the food fish or shellfish and not for sale or barter.

10 (19) "Angling gear" means a line attached to a rod and reel capable  
11 of being held in hand while landing the fish or a hand-held line  
12 operated without rod or reel.

13 (20) "Open season" means those times, manners of taking, and places  
14 or waters established by rule of the commission for the lawful fishing,  
15 taking, or possession of food fish or shellfish. "Open season"  
16 includes the first and last days of the established time.

17 (21) "Fishery" means the taking of one or more particular species  
18 of food fish or shellfish with particular gear in a particular  
19 geographical area.

20 (22) "Limited-entry license" means a license subject to a license  
21 limitation program established in chapter 75.30 RCW.

22 (23) "Seaweed" means marine aquatic plant species that are  
23 dependent upon the marine aquatic or tidal environment, and exist in  
24 either an attached or free floating form, and includes but is not  
25 limited to marine aquatic plants in the classes Chlorophyta,  
26 Phaeophyta, and Rhodophyta.

27 **Sec. 3.** RCW 75.08.230 and 1995 c 367 s 11 are each amended to read  
28 as follows:

29 (1) Except as provided in this section, state and county officers  
30 receiving the following moneys shall deposit them in the state general  
31 fund:

32 (a) The sale of licenses required under this title;

33 (b) The sale of property seized or confiscated under this title;

34 (c) Fines and forfeitures collected under this title;

35 (d) The sale of real or personal property held for department  
36 purposes;

37 (e) Rentals or concessions of the department;

1 (f) Moneys received for damages to food fish, shellfish or  
2 department property; and

3 (g) Gifts.

4 (2) The director shall make weekly remittances to the state  
5 treasurer of moneys collected by the department.

6 (3) All fines and forfeitures collected or assessed by a district  
7 court for a violation of this title or rule of the ((~~director~~))  
8 department shall be remitted as provided in chapter 3.62 RCW.

9 (4) Proceeds from the sale of food fish or shellfish taken in test  
10 fishing conducted by the department, to the extent that these proceeds  
11 exceed the estimates in the budget approved by the legislature, may be  
12 allocated as unanticipated receipts under RCW 43.79.270 to reimburse  
13 the department for unanticipated costs for test fishing operations in  
14 excess of the allowance in the budget approved by the legislature.

15 (5) Proceeds from the sale of salmon carcasses and salmon eggs from  
16 state general funded hatcheries by the department of general  
17 administration shall be deposited in the regional fisheries enhancement  
18 group account established in RCW 75.50.100.

19 (6) Moneys received by the ((~~director~~)) commission under RCW  
20 75.08.045, to the extent these moneys exceed estimates in the budget  
21 approved by the legislature, may be allocated as unanticipated receipts  
22 under RCW 43.79.270. Allocations under this subsection shall be made  
23 only for the specific purpose for which the moneys were received,  
24 unless the moneys were received in settlement of a claim for damages to  
25 food fish or shellfish, in which case the moneys may be expended for  
26 the conservation of these resources.

27 (7) Proceeds from the sale of herring spawn on kelp fishery  
28 licenses by the department, to the extent those proceeds exceed  
29 estimates in the budget approved by the legislature, may be allocated  
30 as unanticipated receipts under RCW 43.79.270. Allocations under this  
31 subsection shall be made only for herring management, enhancement, and  
32 enforcement.

33 **Sec. 4.** RCW 75.10.010 and 1993 sp.s. c 2 s 25 and 1993 c 283 s 7  
34 are each reenacted and amended to read as follows:

35 (1) Fisheries patrol officers and ex officio fisheries patrol  
36 officers within their respective jurisdictions, shall enforce this  
37 title, rules of the ((~~director~~)) department, and other statutes as  
38 prescribed by the legislature.

1 (2) When acting within the scope of subsection (1) of this section  
2 and when an offense occurs in the presence of the fisheries patrol  
3 officer who is not an ex officio fisheries patrol officer, the  
4 fisheries patrol officer may enforce all criminal laws of the state.  
5 The fisheries patrol officer must have successfully completed the basic  
6 law enforcement academy course sponsored by the criminal justice  
7 training commission, or a supplemental course in criminal law  
8 enforcement as approved by the department and the criminal justice  
9 training commission and provided by the department or the criminal  
10 justice training commission, prior to enforcing the criminal laws of  
11 the state.

12 (3) Any liability or claim of liability which arises out of the  
13 exercise or alleged exercise of authority by a fisheries patrol officer  
14 rests with the department unless the fisheries patrol officer acts  
15 under the direction and control of another agency or unless the  
16 liability is otherwise assumed under a written agreement between the  
17 department and another agency.

18 (4) Fisheries patrol officers may serve and execute warrants and  
19 processes issued by the courts.

20 (5) Fisheries patrol officers may enforce the provisions of RCW  
21 79.01.805 and 79.01.810.

22 **Sec. 5.** RCW 75.10.020 and 1983 1st ex.s. c 46 s 33 are each  
23 amended to read as follows:

24 (1) Fisheries patrol officers may inspect and search without  
25 warrant a person, boat, fishing equipment, vehicle, conveyance,  
26 container, or property used in catching, processing, storing, or  
27 marketing food fish or shellfish which they have reason to believe  
28 contain evidence of violations of this title or rules of the  
29 (~~director~~) department. This authority does not extend to quarters in  
30 a boat, building, or other property used exclusively as a private  
31 domicile.

32 (2) Fisheries patrol officers and ex officio fisheries patrol  
33 officers may arrest without warrant a person they have reason to  
34 believe is in violation of this title or rules of the (~~director~~)  
35 department.

36 **Sec. 6.** RCW 75.10.030 and 1990 c 144 s 5 are each amended to read  
37 as follows:

1 (1) Fisheries patrol officers and ex officio fisheries patrol  
2 officers may seize without warrant food fish or shellfish they have  
3 reason to believe have been taken, killed, transported, or possessed in  
4 violation of this title or rule of the (~~director~~) department and may  
5 seize without warrant boats, vehicles, gear, appliances, or other  
6 articles they have reason to believe (~~is~~~~are~~) are held with intent  
7 to violate or (~~has~~~~have~~) have been used in violation of this title  
8 or rule of the (~~director~~) department. The articles seized shall be  
9 subject to forfeiture to the state, regardless of ownership. Articles  
10 seized may be recovered by their owner by depositing into court a cash  
11 bond equal to the value of the seized articles but not more than  
12 twenty-five thousand dollars. The cash bond is subject to forfeiture  
13 to the state in lieu of the seized article.

14 (2)(a) In the event of a seizure of an article under subsection (1)  
15 of this section, proceedings for forfeiture shall be deemed commenced  
16 by the seizure. Within fifteen days following the seizure, the seizing  
17 authority shall serve notice on the owner of the property seized and on  
18 any person having any known right or interest in the property seized.  
19 Notice may be served by any method authorized by law or court rule,  
20 including service by certified mail with return receipt requested.  
21 Service by mail shall be deemed complete upon mailing within the  
22 fifteen-day period following the seizure.

23 (b) If no person notifies the department in writing of the person's  
24 claim of ownership or right to possession of the articles seized under  
25 subsection (1) of this section within forty-five days of the seizure,  
26 the articles shall be deemed forfeited.

27 (c) If any person notifies the department in writing within forty-  
28 five days of the seizure, the person shall be afforded an opportunity  
29 to be heard as to the claim or right. The hearing shall be before the  
30 director or the director's designee, or before an administrative law  
31 judge appointed under chapter 34.12 RCW, except that a person asserting  
32 a claim or right may remove the matter to a court of competent  
33 jurisdiction if the aggregate value of the articles seized is more than  
34 five thousand dollars. The department hearing and any subsequent  
35 appeal shall be as provided for in Title 34 RCW. The burden of  
36 producing evidence shall be upon the person claiming to be the lawful  
37 owner or person claiming lawful right of possession of the articles  
38 seized. The department shall promptly return the seized articles to  
39 the claimant upon a determination by the director or the director's

1 designee, an administrative law judge, or a court that the claimant is  
2 the present lawful owner or is lawfully entitled to possession of the  
3 articles seized, and that the seized articles were improperly seized.

4 (d)(i) No conveyance, including vessels, vehicles, or aircraft, is  
5 subject to forfeiture under this section by reason of any act or  
6 omission established by the owner of the conveyance to have been  
7 committed or omitted without the owner's knowledge or consent.

8 (ii) A forfeiture of a conveyance encumbered by a perfected  
9 security interest is subject to the interest of the secured party if  
10 the secured party neither had knowledge nor consented to the act or  
11 omission.

12 (e) When seized property is forfeited under this section the  
13 department may retain it for official use unless the property is  
14 required to be destroyed, or upon application by any law enforcement  
15 agency of the state, release such property to the agency for the use of  
16 enforcing this title, or sell such property, and deposit the proceeds  
17 to the state general fund, as provided for in RCW 75.08.230.

18 **Sec. 7.** RCW 75.10.040 and 1983 1st ex.s. c 46 s 35 are each  
19 amended to read as follows:

20 (1) Fisheries patrol officers and ex officio fisheries patrol  
21 officers may serve and execute warrants and processes issued by the  
22 courts to enforce this title and rules of the (~~director~~) department.

23 (2) To enforce this title or rules of the (~~director~~) department,  
24 fisheries patrol officers may call to their aid any equipment, boat,  
25 vehicle, or airplane, or ex officio fisheries patrol officer.

26 (3) It is unlawful to knowingly or willfully resist or obstruct a  
27 fisheries patrol officer in the discharge of the officer's duties.

28 **Sec. 8.** RCW 75.10.050 and 1983 1st ex.s. c 46 s 36 are each  
29 amended to read as follows:

30 Violations of this title or rules of the (~~director~~) department  
31 occurring in the offshore waters may be prosecuted in a county  
32 bordering on the Pacific Ocean, or a county in which the food fish or  
33 shellfish are landed.

34 **Sec. 9.** RCW 75.10.100 and 1983 1st ex.s. c 46 s 41 are each  
35 amended to read as follows:

1 If the prosecuting attorney of the county in which a violation of  
2 this title or rule of the ((director)) department occurs fails to file  
3 an information against the alleged violator, the attorney general upon  
4 request of the ((director)) commission may file an information in the  
5 superior court of the county and prosecute the case in place of the  
6 prosecuting attorney. The ((director)) commission may request  
7 prosecution by the attorney general if thirty days have passed since  
8 the ((director)) commission informed the county prosecuting attorney of  
9 the alleged violation.

10 **Sec. 10.** RCW 75.10.110 and 1990 c 144 s 6 are each amended to read  
11 as follows:

12 (1) Unless otherwise provided for in this title, a person who  
13 violates this title or rules of the ((director)) department is guilty  
14 of a gross misdemeanor, and upon a conviction thereof shall be subject  
15 to the penalties under RCW 9.92.020. Food fish or shellfish involved  
16 in the violation shall be forfeited to the state. The court may  
17 forfeit seized articles involved in the violation.

18 (2) The ((director)) commission may specify by rule, when not  
19 inconsistent with applicable statutes, that violation of a specific  
20 rule is an infraction under chapter 7.84 RCW.

21 **Sec. 11.** RCW 75.10.120 and 1990 c 144 s 7 are each amended to read  
22 as follows:

23 (1) Upon conviction of a person for a violation of this title or  
24 rule of the ((director)) department, in addition to the penalty imposed  
25 by law, the court may forfeit the person's license or licenses. The  
26 license or licenses shall remain forfeited pending appeal.

27 (2) The director may prohibit, for one year, the issuance of all  
28 commercial fishing licenses to a person convicted of two or more gross  
29 misdemeanor or class C felony violations of this title or rule of the  
30 ((director)) department in a five-year period or prescribe the  
31 conditions under which the license or licenses may be issued. For  
32 purposes of this section, the term "conviction" means a final  
33 conviction in a state or municipal court. An unvacated forfeiture of  
34 bail or collateral of two hundred fifty dollars or more deposited to  
35 secure the defendant's appearance in court, the payment of a fine, a  
36 plea of guilty, or a finding of guilt on a violation of this title or  
37 rule of the ((director)) department is equivalent to a conviction

1 regardless of whether the imposition of sentence is deferred or the  
2 penalty is suspended.

3 **Sec. 12.** RCW 75.10.130 and 1983 1st ex.s. c 46 s 44 are each  
4 amended to read as follows:

5 Upon two or more convictions of a person in a five-year period for  
6 violating salmon fishing rules of the ((director)) department which  
7 restrict fishing times or areas, the director shall deny all salmon  
8 fishing privileges and suspend all salmon fishing licenses of that  
9 person for one year. A person may not avoid this penalty by  
10 transferring a commercial salmon ((fishing)) fishery license.

11 For the purposes of this section, the term "conviction" means a  
12 final conviction in a state or municipal court. An unvacated  
13 forfeiture of bail or collateral deposited to secure the defendant's  
14 appearance in court, the payment of a fine, a plea of guilty, or a  
15 finding of guilt on a violation of this title is equivalent to a  
16 conviction regardless of whether the imposition of sentence is deferred  
17 or the penalty is suspended.

18 **Sec. 13.** RCW 75.10.140 and 1990 c 163 s 7 are each amended to read  
19 as follows:

20 (1) In addition to the penalties prescribed in RCW 75.10.110 and  
21 75.10.120, the director may revoke geoduck diver licenses held by a  
22 person if within a five-year period that person is convicted or has an  
23 unvacated bail forfeiture for two or more violations of this title or  
24 rules of the ((director)) department relating to geoduck licensing or  
25 harvesting.

26 (2) Except as provided in subsection (3) of this section, the  
27 director shall not issue a geoduck diver license to a person who has  
28 had a license revoked. This prohibition is effective for one year  
29 after the revocation.

30 (3) Appeals of revocations under this section may be taken under  
31 the judicial review provisions of chapter 34.05 RCW. If the license  
32 revocation is determined to be invalid, the director shall reissue the  
33 license to that person.

34 **Sec. 14.** RCW 75.10.150 and 1985 c 248 s 5 are each amended to read  
35 as follows:

1        Since violation of the rules of the (~~director~~) department  
2 relating to the accounting of the commercial harvest of food fish and  
3 shellfish result in damage to the resources of the state, liability for  
4 damage to food fish and shellfish resources is imposed on a wholesale  
5 fish dealer for violation of a provision in chapter 75.28 RCW or a rule  
6 of the (~~director~~) department related to the accounting of the  
7 commercial harvest of food fish and shellfish and shall be for the  
8 actual damages or for damages imposed as follows:

9        (1) For violation of rules requiring the timely presentation to the  
10 department of documents relating to the accounting of commercial  
11 harvest, fifty dollars for each of the first fifteen documents in a  
12 series and ten dollars for each subsequent document in the same series.  
13 If documents relating to the accounting of commercial harvest of food  
14 fish and shellfish are lost or destroyed and the wholesale dealer  
15 notifies the department in writing within seven days of the loss or  
16 destruction, the director shall waive the requirement for timely  
17 presentation of the documents.

18        (2) For violation of rules requiring accurate and legible  
19 information relating to species, value, harvest area, or amount of  
20 harvest, twenty-five dollars for each of the first five violations of  
21 this subsection following July 28, 1985, and fifty dollars for each  
22 violation after the first five violations.

23        (3) For violations of rules requiring certain signatures, fifty  
24 dollars for each of the first two violations and one hundred dollars  
25 for each subsequent violation. For the purposes of this subsection,  
26 each signature is a separate requirement.

27        (4) For other violations of rules relating to the accounting of the  
28 commercial harvest, fifty dollars for each separate violation.

29        **Sec. 15.** RCW 75.10.170 and 1990 c 63 s 5 are each amended to read  
30 as follows:

31        Upon conviction of a person for violation of the conditions or  
32 requirements of an experimental fishery permit or provisions of this  
33 title or rule of the (~~director~~) department while engaged in an  
34 emerging commercial fishery, the director may suspend or revoke the  
35 experimental fishery permit and all fishing privileges pursuant thereto  
36 or present the conditions under which the experimental fishery permit  
37 may be reissued. That suspension or revocation shall become effective

1 on the date the director gives the notice prescribed in RCW  
2 34.05.422(1)(c).

3 For the purposes of this section, the term "conviction" means a  
4 final conviction in a state or municipal court. An unvacated  
5 forfeiture of bail or collateral of more than two hundred fifty dollars  
6 deposited to secure the defendant's appearance in court, the payment of  
7 a fine, a plea of guilty, or a finding of guilt on a violation of this  
8 title is equivalent to a conviction regardless of whether the  
9 imposition of sentence is deferred or the penalty is suspended.

10 **Sec. 16.** RCW 75.10.180 and 1990 c 144 s 1 are each amended to read  
11 as follows:

12 Persons who fish for food fish or shellfish for personal use and  
13 violate this title or the rules of the ((director)) department shall be  
14 subject to the following penalties:

15 (1) The following violations are infractions and are punishable  
16 under chapter 7.84 RCW:

17 (a) The failure to immediately record a catch of salmon or sturgeon  
18 on a catch record card;

19 (b) The use of barbed hooks in a barbless hook-only fishery; and

20 (c) Other personal use violations specified by the ((director))  
21 commission under RCW 75.10.110.

22 (2) The following violations are misdemeanors and are punishable  
23 under RCW 9.92.030:

24 (a) The retention of undersized food fish or shellfish;

25 (b) The retention of more food fish or shellfish than is legally  
26 allowed, but less than three times the legally allowed personal use  
27 limit;

28 (c) The intentional wasting of recreationally caught food fish or  
29 shellfish; and

30 (d) The setting or lifting of shrimp pots in Hood Canal from one  
31 hour after sunset until one hour before sunrise.

32 (3) The following violations are gross misdemeanors and are  
33 punishable under RCW 9.92.020:

34 (a) The snagging of food fish;

35 (b) Fishing in closed areas or during a closed season;

36 (c) Commingling a personal food fish catch with a commercial food  
37 fish catch;

1 (d) The retention of at least three times the legally allowed  
2 personal use limits of food fish or shellfish;

3 (e) The sale, barter, or trade of food fish or shellfish with a  
4 wholesale value of less than two hundred fifty dollars by a person who  
5 has caught the food fish or shellfish with fishing gear authorized  
6 under personal use rules or who has received the food fish or shellfish  
7 from someone who caught it with fishing gear authorized under personal  
8 use rules; and

9 (f) Other unclassified personal use violations of Title 75 RCW.

10 (4) The following violation is a class C felony and is punishable  
11 under RCW 9A.20.021(1)(c): The sale, barter, or trade of food fish or  
12 shellfish with a wholesale value of two hundred fifty dollars or more  
13 by a person who has caught the food fish or shellfish with fishing gear  
14 authorized under personal use rules or has received the food fish or  
15 shellfish from someone who caught it with fishing gear authorized under  
16 personal use rules.

17 **Sec. 17.** RCW 75.10.190 and 1990 c 144 s 2 are each amended to read  
18 as follows:

19 Persons who fish, buy, or sell food fish and shellfish commercially  
20 and violate this title or the rules of the (~~director~~) department  
21 shall be subject to the following penalties:

22 (1) The following violations are misdemeanors and are punishable  
23 under RCW 9.92.030:

24 (a) The failure to complete a fish ticket with all the required  
25 information for a commercial fish or shellfish landing; and

26 (b) The failure to report a commercial fish catch as required by  
27 department rules.

28 (2) The following violations are gross misdemeanors and are  
29 punishable under RCW 9.92.020:

30 (a) The retention of illegal food fish or shellfish species;

31 (b) The wasting of commercially caught food fish or shellfish;

32 (c) Commingling commercial and personal use food fish or shellfish  
33 catches;

34 (d) The failure to comply with department rules on commercial  
35 fishing licenses;

36 (e) The failure to comply with department requirements on fishing  
37 gear specifications;

1 (f) The failure to obtain a delivery license as required by  
2 department rules;

3 (g) Violations of the fisheries statutes or rules by fish buyers or  
4 wholesale dealers other than violations for fish tickets under  
5 subsection (1)(a) of this section;

6 (h) Fishing during a closed season;

7 (i) Illegal geoduck harvesting off the legal harvesting tract; and

8 (j) Other unclassified commercial violations of Title 75 RCW.

9 (3) The following violations are class C felonies and are  
10 punishable under RCW 9A.20.021(1)(c):

11 (a) Intentionally fishing in a closed area using fishing gear not  
12 authorized under personal use regulations;

13 (b) Intentionally netting salmon in the Pacific Ocean;

14 (c) Harvesting more than one hundred pounds of geoducks outside of  
15 the boundaries of a harvest tract designated by a harvest agreement  
16 from the department of natural resources if:

17 (i) The harvester does not have a valid harvesting agreement from  
18 the department of natural resources; or

19 (ii) The harvesting is done more than one-half mile from the  
20 nearest boundary of any harvesting tract designated by a department of  
21 natural resources harvesting agreement;

22 (d) Unlawful participation by a non-Indian fisher with intent to  
23 profit in a treaty Indian fishery;

24 (e) Intentionally fishing within the closed waters of a fish  
25 hatchery;

26 (f) The sale, barter, or trade of food fish or shellfish with a  
27 wholesale value of two hundred fifty dollars or more by a person who  
28 does not have a valid commercial fishing license and has caught the  
29 food fish or shellfish using fishing gear not authorized under personal  
30 use rules, or has received the food fish or shellfish from someone who  
31 has caught it with fishing gear not authorized under personal use  
32 rules; and

33 (g) Being in possession of food fish or shellfish with a wholesale  
34 value of two hundred fifty dollars or more while using fishing gear not  
35 authorized under personal use regulations without a valid commercial  
36 fishing license.

37 **Sec. 18.** RCW 75.10.200 and 1993 sp.s. c 2 s 26 are each amended to  
38 read as follows:

1 Persons who violate this title or the rules of the ((director))  
2 department shall be subject to the following penalties:

3 (1) The following violations are gross misdemeanors and are  
4 punishable under RCW 9.92.020:

5 (a) Violating RCW 75.20.100; and

6 (b) Violating department statutes that require fish screens, fish  
7 ladders, and other protective devices for fish.

8 (2) The following violations are a class C felony and are  
9 punishable under RCW 9A.20.021(1)(c):

10 (a) Discharging explosives in waters that contain adult salmon or  
11 sturgeon(~~(:—PROVIDED, That)~~). However, the lawful discharge of  
12 devices for the purpose of frightening or killing marine mammals or for  
13 the lawful removal of snags or for actions approved under RCW 75.20.100  
14 or 75.12.070(2) are exempt from this subsection; and

15 (b) To knowingly purchase food fish or shellfish with a wholesale  
16 value greater than two hundred fifty dollars that were taken by methods  
17 or during times not authorized by department rules, or were taken by  
18 someone who does not have a valid commercial fishing license, a valid  
19 fish buyer's license, or a valid wholesale dealer's license, or were  
20 taken with fishing gear authorized for personal use.

21 **Sec. 19.** RCW 75.12.020 and 1983 1st ex.s. c 46 s 49 are each  
22 amended to read as follows:

23 It is unlawful to fish for or take food fish at a rack, dam, or  
24 other obstruction or in the waters and on the beaches within one mile  
25 below a rack, dam, or other obstruction except as provided by rule of  
26 the ((director)) department.

27 **Sec. 20.** RCW 75.12.070 and 1983 1st ex.s. c 46 s 53 are each  
28 amended to read as follows:

29 (1) Except as provided by rule of the ((director)) department, it  
30 is unlawful to shoot, gaff, snag, snare, spear, stone, or otherwise  
31 molest food fish or shellfish in state waters.

32 (2) It is unlawful to use or discharge an explosive substance in  
33 state waters, except by permit of the director.

34 **Sec. 21.** RCW 75.12.100 and 1983 1st ex.s. c 46 s 55 are each  
35 amended to read as follows:

1 It is unlawful to purchase, handle, deal in, sell, or possess food  
2 fish or shellfish contrary to this title or the rules of the  
3 ((~~director~~)) department.

4 **Sec. 22.** RCW 75.12.115 and 1983 1st ex.s. c 46 s 56 are each  
5 amended to read as follows:

6 It is unlawful to fish commercially for crayfish in state waters  
7 except where crayfish have been commercially cultured or as permitted  
8 by rules of the ((~~director~~)) department.

9 **Sec. 23.** RCW 75.12.420 and 1983 1st ex.s. c 46 s 67 are each  
10 amended to read as follows:

11 It is unlawful for a ((~~fisherman~~)) fisher, dealer, or processor of  
12 food fish or shellfish to fail to make a report or return as required  
13 by this title or rule of the ((~~director~~)) department.

14 **Sec. 24.** RCW 75.12.650 and 1983 1st ex.s. c 46 s 69 are each  
15 amended to read as follows:

16 It is unlawful to fish commercially for salmon using fishing gear  
17 not authorized for commercial salmon fishing by rule of the  
18 ((~~director~~)) department. The ((~~director~~)) commission shall not  
19 authorize angling gear or other personal use gear for commercial salmon  
20 fishing.

21 **Sec. 25.** RCW 75.24.050 and 1983 1st ex.s. c 46 s 80 are each  
22 amended to read as follows:

23 It is unlawful to take shellfish from state oyster reserves or  
24 tidelands under the jurisdiction of the state contrary to this title or  
25 rules of the ((~~director~~)) department.

26 **Sec. 26.** RCW 75.24.090 and 1983 1st ex.s. c 46 s 84 are each  
27 amended to read as follows:

28 It is unlawful to destroy oysters or clams by culling them on land  
29 or shore and leaving the culled oysters or clams there to die. The  
30 culled oysters or clams must be returned to the harvest area, except as  
31 provided by rule of the ((~~director~~)) department.

32 **Sec. 27.** RCW 75.28.040 and 1993 c 340 s 6 are each amended to read  
33 as follows:

1 (1) A commercial license issued under this chapter permits the  
2 license holder to engage in the activity for which the license is  
3 issued in accordance with this title and the rules of the ((~~director~~))  
4 department.

5 (2) No security interest or lien of any kind, including tax liens,  
6 may be created or enforced in a license issued under this chapter.

7 (3) Unless otherwise provided in this title or rules of the  
8 ((~~director~~)) department, commercial licenses and permits issued under  
9 this chapter expire at midnight on December 31st of the calendar year  
10 for which they are issued. In accordance with this title, licenses may  
11 be renewed annually upon application and payment of the prescribed  
12 license fees.

13 **Sec. 28.** RCW 75.28.110 and 1993 sp.s. c 17 s 35 are each amended  
14 to read as follows:

15 (1) The following commercial salmon fishery licenses are required  
16 for the license holder to use the specified gear to fish for salmon in  
17 state waters. Only a person who meets the qualifications of RCW  
18 75.30.120 may hold a license listed in this subsection. The licenses  
19 and their annual fees and surcharges under RCW 75.50.100 are:

	Fishery License	Resident Fee	Nonresident Fee	Surcharge
22	(a) Salmon Gill Net«Grays Harbor-Columbia river	\$380	\$685	plus \$100
24	(b) Salmon Gill Net«Puget Sound	\$380	\$685	plus \$100
26	(c) Salmon Gill Net«Willapa Bay-Columbia river	\$380	\$685	plus \$100
28	(d) Salmon purse seine	\$530	\$985	plus \$100
29	(e) Salmon reef net	\$380	\$685	plus \$100
30	(f) Salmon troll	\$380	\$685	plus \$100

31 (2) A license issued under this section authorizes no taking or  
32 delivery of salmon or other food fish unless a vessel is designated  
33 under RCW 75.28.045.

34 (3) Holders of commercial salmon fishery licenses may retain  
35 incidentally caught food fish other than salmon, subject to rules of  
36 the ((~~director~~)) department.

37 (4) A salmon troll license includes a salmon delivery license.

38 (5) A salmon gill net license authorizes the taking of salmon only  
39 in the geographical area for which the license is issued. The

1 geographical designations in subsection (1) of this section have the  
2 following meanings:

3 (a) "Puget Sound" includes waters of the Strait of Juan de Fuca,  
4 Georgia Strait, Puget Sound and all bays, inlets, canals, coves,  
5 sounds, and estuaries lying easterly and southerly of the international  
6 boundary line and a line at the entrance to the Strait of Juan de Fuca  
7 projected northerly from Cape Flattery to the lighthouse on Tatoosh  
8 Island and then to Bonilla Point on Vancouver Island.

9 (b) "Grays Harbor-Columbia river" includes waters of Grays Harbor  
10 and tributary estuaries lying easterly of a line projected northerly  
11 from Point Chehalis Light to Point Brown and those waters of the  
12 Columbia river and tributary sloughs and estuaries easterly of a line  
13 at the entrance to the Columbia river projected southerly from the most  
14 westerly point of the North jetty to the most westerly point of the  
15 South jetty.

16 (c) "Willapa Bay-Columbia river" includes waters of Willapa Bay and  
17 tributary estuaries and easterly of a line projected northerly from  
18 Leadbetter Point to the Cape Shoalwater tower and those waters of the  
19 Columbia river and tributary sloughs described in (b) of this  
20 subsection.

21 **Sec. 29.** RCW 75.28.315 and 1985 c 248 s 4 are each amended to read  
22 as follows:

23 Wholesale fish dealers are responsible for documenting the  
24 commercial harvest of food fish and shellfish according to the rules of  
25 the ~~((director))~~ department. The director may allow only wholesale  
26 fish dealers or their designees to receive the forms necessary for the  
27 accounting of the commercial harvest of food fish and shellfish.

28 **Sec. 30.** RCW 75.28.323 and 1985 c 248 s 6 are each amended to read  
29 as follows:

30 (1) A wholesale fish dealer shall not take possession of food fish  
31 or shellfish until the dealer has deposited with the department an  
32 acceptable performance bond on forms prescribed and furnished by the  
33 department. This performance bond shall be a corporate surety bond  
34 executed in favor of the department by a corporation authorized to do  
35 business in the state of Washington under chapter 48.28 RCW and  
36 approved by the department. The bond shall be filed and maintained in  
37 an amount equal to one thousand dollars for each buyer engaged by the

1 wholesale dealer. In no case shall the bond be less than two thousand  
2 dollars nor more than fifty thousand dollars.

3 (2) A wholesale dealer shall, within seven days of engaging  
4 additional fish buyers, notify the department and increase the amount  
5 of the bonding required in subsection (1) of this section.

6 (3) The director may suspend and refuse to reissue a wholesale fish  
7 dealer's license of a dealer who has taken possession of food fish or  
8 shellfish without an acceptable performance bond on deposit with the  
9 department.

10 (4) The bond shall be conditioned upon the compliance with the  
11 requirements of this chapter and rules of the (~~director~~) department  
12 relating to the payment of fines for violations of rules for the  
13 accounting of the commercial harvest of food fish or shellfish. In  
14 lieu of the surety bond required by this section the wholesale fish  
15 dealer may file with the department a cash deposit, negotiable  
16 securities acceptable to the department, or an assignment of a savings  
17 account or of a savings certificate in a Washington bank on an  
18 assignment form prescribed by the department.

19 (5) Liability under the bond shall be maintained as long as the  
20 wholesale fish dealer engages in activities under RCW 75.28.300 unless  
21 released. Liability under the bond may be released only upon written  
22 notification from the department. Notification shall be given upon  
23 acceptance by the department of a substitute bond or forty-five days  
24 after the expiration of the wholesale fish dealer's annual license. In  
25 no event shall the liability of the surety exceed the amount of the  
26 surety bond required under this chapter.

27 **Sec. 31.** RCW 75.28.690 and 1993 c 340 s 22 are each amended to  
28 read as follows:

29 (1) A salmon roe license is required for a crew member on a boat  
30 designated on a salmon charter license to sell salmon roe as provided  
31 in subsection (2) of this section. An individual under sixteen years  
32 of age may hold a salmon roe license.

33 (2) A crew member on a boat designated on a salmon charter license  
34 may sell salmon roe taken from fish caught for personal use, subject to  
35 rules of the (~~director~~) department and the following conditions:

36 (a) The salmon is taken by an angler fishing on the charter boat;

1 (b) The roe is the property of the angler until the roe is given to  
2 the crew member. The crew member shall notify the charter boat's  
3 passengers of this fact;

4 (c) The crew member sells the roe to a licensed wholesale dealer;  
5 and

6 (d) The crew member is licensed as provided in subsection (1) of  
7 this section and has the license in possession whenever the crew member  
8 sells salmon roe.

9 **Sec. 32.** RCW 77.04.020 and 1993 sp.s. c 2 s 59 are each amended to  
10 read as follows:

11 The department consists of the state fish and wildlife commission  
12 and the director. The director is responsible for the administration  
13 and operation of the department, subject to the provisions of this  
14 title. The commission may delegate to the director (~~((additional duties  
15 and powers necessary and appropriate to carry out this title))~~) any of  
16 the powers and duties vested in the commission. The director shall  
17 perform the duties prescribed by law and shall carry out the basic  
18 goals and objectives prescribed (~~((pursuant to))~~) under RCW 77.04.055.

19 **Sec. 33.** RCW 43.300.040 and 1993 sp.s. c 2 s 5 are each amended to  
20 read as follows:

21 In addition to other powers and duties granted or transferred to  
22 the director, the (~~((director shall have the following powers and  
23 duties:~~

24 ~~(1) Supervise and administer the department in accordance with law;~~

25 ~~(2) Appoint personnel and prescribe their duties. Except as  
26 otherwise provided, personnel of the department are subject to chapter  
27 41.06 RCW, the state civil service law;~~

28 ~~(3) Enter into contracts on behalf of the agency;~~

29 ~~(4) Adopt rules in accordance with chapter 34.05 RCW, the  
30 administrative procedure act;~~

31 ~~(5) Delegate powers, duties, and functions as the director deems  
32 necessary for efficient administration but the director shall be  
33 responsible for the official acts of the officers and employees of the  
34 department;~~

35 ~~(6) Appoint advisory committees and undertake studies, research,  
36 and analysis necessary to support the activities of the department;~~

1       ~~(7) Accept and expend grants, gifts, or other funds to further the~~  
2 ~~purposes of the department;~~

3       ~~(8) Carry out the policies of the governor and the basic goals and~~  
4 ~~objectives as prescribed by the fish and wildlife commission pursuant~~  
5 ~~to RCW 77.04.055; and~~

6       ~~(9) Perform other duties as are necessary and consistent with law))~~  
7 commission may delegate to the director any of the powers and duties  
8 vested in the commission.

9       NEW SECTION.   **Sec. 34.**   RCW 43.300.030 and 1993 sp.s. c 2 s 4 are  
10 each repealed.

11       **Sec. 35.**   RCW 77.04.090 and 1995 c 403 s 111 are each amended to  
12 read as follows:

13       The commission shall adopt permanent rules and amendments to or  
14 repeals of existing rules by approval of ~~((four))~~ a majority of the  
15 members by resolution, entered and recorded in the minutes of the  
16 commission: PROVIDED, That the commission may not adopt rules after  
17 July 23, 1995, that are based solely on a section of law stating a  
18 statute's intent or purpose, on the enabling provisions of the statute  
19 establishing the agency, or on any combination of such provisions, for  
20 statutory authority to adopt any rule. The commission shall adopt  
21 emergency rules by approval of ~~((four))~~ a majority of the members. The  
22 commission ~~((or the director))~~, when adopting emergency rules under RCW  
23 77.12.150, shall adopt rules in conformance with chapter 34.05 RCW.  
24 Judicial notice shall be taken of the rules filed and published as  
25 provided in RCW 34.05.380 and 34.05.210.

26       A copy of an emergency rule, certified as a true copy by a member  
27 of the commission, the director, or by a person authorized in writing  
28 by the director to make the certification, is admissible in court as  
29 prima facie evidence of the adoption and validity of the rule.

30       NEW SECTION.   **Sec. 36.**   This act shall take effect July 1, 1996."

1 **ESHB 2793** - S COMM AMD  
2 By Committee on Natural Resources

3

4 On page 1, line 2 of the title, after "commission;" strike the  
5 remainder of the title and insert "amending RCW 75.08.011, 75.08.230,  
6 75.10.020, 75.10.030, 75.10.040, 75.10.050, 75.10.100, 75.10.110,  
7 75.10.120, 75.10.130, 75.10.140, 75.10.150, 75.10.170, 75.10.180,  
8 75.10.190, 75.10.200, 75.12.020, 75.12.070, 75.12.100, 75.12.115,  
9 75.12.420, 75.12.650, 75.24.050, 75.24.090, 75.28.040, 75.28.110,  
10 75.28.315, 75.28.323, 75.28.690, 77.04.020, 43.300.040, and 77.04.090;  
11 reenacting and amending RCW 75.10.010; creating a new section;  
12 repealing RCW 43.300.030; and providing an effective date."

--- END ---