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**HOUSE BILL 2418**

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**State of Washington 65th Legislature 2018 Regular Session**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The structural integrity of the facilities; and

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  The University of Washington school of aquatic and fishery sciences, in cooperation with Western Washington University and Washington State University shall conduct a detailed analysis of nonnative finfish aquaculture in Washington. The analysis must include freshwater and upland aquaculture in addition to marine aquaculture. The University of Washington shall invite consultation and participation from the Northwest Indian fisheries commission and the Northwest Indian College. By December 1, 2018, the analysis must be submitted consistent with RCW 43.01.036 to the appropriate committees of the legislature, the fish and wildlife commission, the board of natural resources, the invasive species council, and the Northwest Indian fisheries commission. At a minimum, the study must include:

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

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

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

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

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

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

NEW SECTION. **Sec.**  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.

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

**--- END ---**