

HOUSE BILL REPORT

EHB 2957

As Passed House:
February 14, 2018

Title: An act relating to reducing escape of nonnative finfish from marine finfish aquaculture facilities.

Brief Description: Reducing escape of nonnative finfish from marine finfish aquaculture facilities.

Sponsors: Representatives Lytton, Peterson, Robinson, Wilcox, Taylor, Stambaugh, Sawyer, Chapman, Pollet and Stanford.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/31/18, 2/1/18 [DPS].

Floor Activity:

Passed House: 2/14/18, 67-31.

Brief Summary of Engrossed Bill

- Prohibits the Department of Natural Resources from issuing or renewing any leases, or otherwise authorizing the use of state-owned aquatic lands for the purpose of nonnative finfish aquaculture.
- Prohibits the Department of Ecology, under its water pollution control authority, and the Department of Fish and Wildlife from authorizing or permitting any activities related to nonnative finfish aquaculture after the expiration date of existing lands leases.
- Directs the departments of Ecology, Natural Resources, Agriculture, and Fish and Wildlife, in consultation with a variety of other entities, to update existing guidance and resources on planning for and permitting commercial marine net pen aquaculture.
- Requires any marine finfish aquaculture facility permitted by the Department of Fish and Wildlife to be inspected by a marine engineering firm periodically.
- Specifies that separation from employment that results from the lease and permitting prohibitions is a qualifying event for the purpose of dislocated worker eligibility.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Blake, Chair; Buys, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Chandler, Fitzgibbon, Kretz, Orcutt, Pettigrew, Schmick and Springer.

Minority Report: Do not pass. Signed by 5 members: Representatives Chapman, Vice Chair; Lytton, Robinson, Stanford and Walsh.

Staff: Rebecca Lewis (786-7339).

Background:

Finfish Aquaculture.

Aquaculture is the process of growing, farming, or cultivating aquatic products in marine or freshwater environments. Aquatic products include plants, shellfish, and finfish. Finfish raised in Washington's marine waters are initially hatched and reared in a freshwater environment until they are ready for the marine environment, at which point they are transferred to net pens in marine waters, where they are held until reaching market size.

Aquatic Land Lease Requirements.

State-owned aquatic lands include approximately 2,000 square miles of beaches, tidelands, and bedlands throughout the marine waters of Puget Sound and along the Strait of Juan de Fuca and the Pacific Ocean coast, as well as most of the navigable rivers, streams and lakes. The DNR manages the state's aquatic lands and issues leases for a variety of activities and projects that take place on such lands. Potential lessees must obtain all permits necessary to conduct a proposed activity or project before the DNR may authorize the activity or project on leased land.

Marine Finfish Aquaculture Permitting.

In addition to local permits and federal permits through the United States Army Corps of Engineers, United States Coast Guard, and Food and Drug Administration, there are four main state permits or approvals necessary to conduct net pen aquaculture in Washington's marine waters:

- a National Pollutant Discharge Elimination System (NPDES) permit through the Department of Ecology (Ecology);
- an Aquatic Farm Registration through the Department of Fish and Wildlife (WDFW);
- a Marine Finfish Aquaculture Permit through the WDFW; and
- Fish Transport Permits through the WDFW.

National Pollutant Discharge Elimination System.

The federal Clean Water Act establishes the NPDES, which regulates discharges of pollutants to surface waters. In Washington, NPDES permitting authority is delegated to the state, allowing Ecology to issue NPDES permits. The NPDES permits are issued for terms of no

more than five years at a time. Wastewater discharge permits place limits on the quantity and type of contaminants that may be discharged. There are several plans and reports addressing accidental fish release and pollution and disease control required as a part of the NPDES permit for aquaculture. These include an accidental fish release response plan and a fish release prevention and monitoring plan, both coordinated with the WDFW. Marine finfish farms that harvest more than 20,000 pounds of fish per year, or that feed more than 5,000 pounds of fish food per month, must obtain NPDES permit from Ecology.

Aquatic Farm Registration.

The WDFW is required to register each aquatic farm and to maintain a database of aquatic farm registrations. Each aquatic farmer must renew their registration annually and provide a quarterly report on the farm's monthly production including species cultured, quantity harvested for sale, and unit value. Reporting of aquaculture activity during the previous calendar year constitutes renewal for the following year. Additionally, the WDFW and the Department of Agriculture have developed a disease inspection and control program for aquatic farmers.

Marine Finfish Aquaculture Permit.

An aquatic farmer must obtain a Marine Finfish Aquaculture Permit, valid for five years, from the WDFW in order to raise any species of marine finfish in net pens in Washington's marine waters. The aquatic farmer must include an operations plan, escape prevention plan, and an escape reporting and recapture plan with the Marine Finfish Aquaculture Permit application.

Live Fish Transport Permit.

In order to transport live fish or eggs into or within the state, a person must obtain a Live Fish Transport Permit from the WDFW to ensure that:

- fish or eggs brought into the state are free from reportable fish pathogens;
- aquatic invasive species are not shipped with the fish to be transported; and
- undesirable species do not cause harm to native species.

A Live Fish Transport Permit is required each time fish or eggs are to be transported into or within the state.

Guidance for Net Pen Aquaculture.

The State of Washington, through the departments of Agriculture, Ecology, and Fish and Wildlife, with assistance from the National Center for Coastal Ocean Science, the Northwest Indian Fisheries Commission, and the Port Gamble S'Klallam Tribe, has begun to research and prepare new guidelines for commercial salmon farms in Washington. The stated purpose of the guidelines is to build the state's knowledge about the commercial salmon farming industry, deliver science-based planning tools to regulators and industry, and contribute to protecting native Pacific salmon.

Dislocated Workers.

The Training Benefits program, administered by the Employment Security Department, provides extended unemployment benefits while a person participates in approved training for another career.

Summary of Engrossed Bill:

Atlantic Salmon Aquaculture, Aquatic Land Leases, and Permitting.

The DNR may not enter into any new lease or use authorization, or renew or extend any lease or use authorization for nonnative finfish aquaculture on state-owned aquatic lands.

The DFW and Ecology may only authorize or permit nonnative finfish aquaculture activities that are authorized under a current lease of state-owned aquatic lands. The DFW and Ecology may not permit any nonnative finfish aquaculture activities after the expiration date of current leases. This requirement covers authorization or permits issued:

- by DFW, generally;
- by Ecology under its water pollution control authority generally, and specifically for waste discharges from marine finfish rearing facilities;
- under statutes regulating aquatic farm disease inspection and control, specifically;
- under statutes governing marine finfish aquaculture escapement prevention, management planning, and recapture administered by the DFW, specifically; and
- for fish and wildlife possession and transportation administered by the DFW, specifically.

Any marine finfish aquaculture facility permitted by the DFW must be inspected by a marine engineering firm approximately every two years, when net pens are fallow, at the expense of the finfish facility operator. The engineering firm must be hired by the operator and approved by the DFW. Inspections must include topside and mooring assessments related to escape potential, structural integrity, permit compliance, and operations. Net pen facilities must be found in good working order to receive fish, and the Director of the DFW may require the removal of fish, or may deny a fish transport permit, if a facility is found to be in imminent danger of collapse.

Guidance for Net Pen Aquaculture.

The DFW, DNR, Department of Agriculture, and Ecology must continue the interagency effort to update guidance for planning and permitting of commercial marine net pen aquaculture. The departments must seek advice and technical assistance from the Northwest Indian Fisheries Commission and the National Centers for Coastal Ocean Science. The departments must also invite consultation and participation from:

- academic institutions such as the University of Washington School of Aquatic and Fishery Sciences, Washington State University, Western Washington University, and the Northwest Indian College; and
- additional authorities as appropriate, including federally recognized Indian tribes.

The guidance must address several topics including local and state regulatory requirements and enforcement, best management practices for finfish aquaculture, water quality, the state of the science concerning marine finfish aquaculture impacts to native species, and

recommendations for future legislative oversight of marine finfish net pen aquaculture. The departments must report to the legislature by November 1, 2019.

Dislocated Workers.

Separation from employment that may result from the lease and permitting prohibitions is a qualifying event for the purpose of dislocated worker eligibility.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is a difficult issue in many respects, with impacts that have brought out strong beliefs on both sides. There is an effort to find a path forward. Sometimes in agriculture there are crops that people do not believe belong in the state and that seems to be a part of the debate with this issue. The process is important and there have been several bills on this topic with different approaches. A healthy and productive Salish Sea is essential to the Lummi Nation and the fishing industry. Aquaculture can be done responsibly. There is opposition to farming nonnative species in the Salish Sea. If this remains a product farmed in Washington, it should be conducted upland. The response by Cooke Aquaculture to the collapse is concerning. The company did not take responsibility and blamed the collapse on the eclipse. Future escapes are inevitable and put native and hatchery salmon at risk. There is evidence that this is a dangerous industry. Washington is not ready to deal with toxic chemicals, sea lice, and disease that are associated with farming of Atlantic salmon. Atlantic salmon have been found to spawn in Canada. The Skagit River is the only river in the lower 48 states with all the original native fish still spawning. Nonnative invasive species do not need to be in Washington waters. Retaining rights to harvest fish and shellfish are a key piece of treaty rights that have been reaffirmed by the courts. There is a desire to phase out farming of all nonnative species. This bill is a compromise. If keeping net pens in operation were put to public vote, the public would vote for an immediate termination of leases. There are other ways forward to provide food and prevent pollution. Had the state known what it knows now, permits for the net pens would not have been issued.

(Opposed) The fact that a species is nonnative does not make it invasive. There is a \$14 billion seafood deficit that can be attributed to regulations. Half of foreign seafood is farmed. There is not need for more regulations. Cooke ran out of time trying to update infrastructure they acquired. The spawning of of Atlantic salmon has not been observed on the west coast. Farmed Atlantic salmon are conditioned to eat pellets, and the stomachs of escaped salmon have been found empty. During the freshwater phase, fish are vaccinated and raised in disease free environments. This bill would eliminate hundreds of jobs.

(Other) Ecology would like to confirm whether or not there is a need for the agency to update the NPDES permits for current leases. The bill appears to restrict only Atlantic salmon. The

Department of Fish and Wildlife suggests that the state include nonnative aquaculture as well. The cultivation of native salmon in commercial aquaculture is a greater risk than the cultivation of Atlantic salmon to wild Pacific salmon stocks. The unemployment rate in the counties where Cooke has its operations are higher than state and United States averages. Jobs have already been lost and this bill represents over 100 more. The business community requests that the committee find a middle ground on the issue.

Persons Testifying: (In support) Representative Lytton, prime sponsor; Jay Julius, Lummi Nation Chairman; Brian Cladoosby, Swinomish Tribe; Kurt Grinnell, Jamestown S'Klallam Tribe; Nick Gayeski, Wild Fish Conservancy; Bruce Wishart, Sierra Club; Alyssa Barton, Puget Soundkeeper Alliance; David Harsila and Ray Honea, Puget Sound Harvestors Association; Jennifer Towne, Cypress Island Home Owners' Association; and Thomas Bancroft, Our Salmon Our Sound Coalition and Audubon Washington.

(Opposed) Randy Hodgins, Brett Raemer, Jesse Philips, Andrew Sloaf, Kyl Wood, and Dan Charron, Cooke Aquaculture; Dan Swecker, Washington Fish Growers Association; and Hugh Mitchell.

(Other) Rich Doenges, Washington Department of Ecology; Ken Warheit, Washington Department of Fish and Wildlife; and Mary Catherine McAleer, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.