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HOUSE BILL 2957

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State of Washington                      65th Legislature                      2018 Regular Session

By Representatives Lytton, Peterson, Robinson, Wilcox, Taylor, Stambaugh, Sawyer, Chapman, Pollet, and Stanford

Read first time 01/30/18. Referred to Committee on Agriculture & Natural Resources.

1            AN ACT Relating to reducing escape of nonnative finfish from  
2 marine finfish aquaculture facilities; amending RCW 77.115.010,  
3 77.115.030, 77.115.040, 77.125.030, 77.12.047, 90.48.220, and  
4 50.04.075; adding a new section to chapter 79.105 RCW; adding new  
5 sections to chapter 77.12 RCW; adding a new section to chapter 90.48  
6 RCW; creating a new section; and providing an expiration date.

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

8            NEW SECTION.    **Sec. 1.** A new section is added to chapter 79.105  
9 RCW under the subchapter heading "general use, sale, and lease  
10 provisions" to read as follows:

11            (1) On and after the effective date of this section, the  
12 department may not enter into a new lease or other use authorization  
13 where the use includes marine finfish aquaculture of Atlantic salmon.

14            (2) On and after the effective date of this section, the  
15 department may not renew or extend a lease or other use authorization  
16 in existence on the effective date of this section where the use  
17 includes marine finfish aquaculture of Atlantic salmon.

18            NEW SECTION.    **Sec. 2.** A new section is added to chapter 77.12  
19 RCW to read as follows:

1 (1) The department may only authorize or permit marine finfish  
2 aquaculture of Atlantic salmon where it is an authorized use under a  
3 lease of state-owned aquatic lands in effect on the effective date of  
4 this section.

5 (2) For marine finfish aquaculture of Atlantic salmon that  
6 qualifies under subsection (1) of this section, the department may  
7 not authorize or permit any such activities or operations after the  
8 expiration date of the relevant lease of state-owned aquatic lands in  
9 effect on the effective date of this section.

10 (3) For purposes of this section, "state-owned aquatic lands" has  
11 the meaning provided in RCW 79.105.060.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.48  
13 RCW to read as follows:

14 (1) The department may only authorize or permit marine finfish  
15 aquaculture of Atlantic salmon where it is an authorized use under a  
16 lease of state-owned aquatic lands in effect on the effective date of  
17 this section.

18 (2) For marine finfish aquaculture of Atlantic salmon that  
19 qualifies under subsection (1) of this section, the department may  
20 not authorize or permit any such activities or operations after the  
21 expiration date of the relevant lease of state-owned aquatic lands in  
22 effect on the effective date of this section.

23 (3) For purposes of this section, "state-owned aquatic lands" has  
24 the meaning provided in RCW 79.105.060.

25 **Sec. 4.** RCW 77.115.010 and 2000 c 107 s 122 are each amended to  
26 read as follows:

27 (1) The director of agriculture and the director shall jointly  
28 develop a program of disease inspection and control for aquatic  
29 farmers as defined in RCW 15.85.020. The program shall be  
30 administered by the department under rules established under this  
31 section. The purpose of the program is to protect the aquaculture  
32 industry and wildstock fisheries from a loss of productivity due to  
33 aquatic diseases or maladies. As used in this section "diseases"  
34 means, in addition to its ordinary meaning, infestations of parasites  
35 or pests. The disease program may include, but is not limited to, the  
36 following elements:

37 (a) Disease diagnosis;

38 (b) Import and transfer requirements;

1 (c) Provision for certification of stocks;  
2 (d) Classification of diseases by severity;  
3 (e) Provision for treatment of selected high-risk diseases;  
4 (f) Provision for containment and eradication of high-risk  
5 diseases;  
6 (g) Provision for destruction of diseased cultured aquatic  
7 products;  
8 (h) Provision for quarantine of diseased cultured aquatic  
9 products;  
10 (i) Provision for coordination with state and federal agencies;  
11 (j) Provision for development of preventative or control  
12 measures;  
13 (k) Provision for cooperative consultation service to aquatic  
14 farmers; and  
15 (l) Provision for disease history records.  
16 (2) The commission shall adopt rules implementing this section.  
17 However, such rules shall have the prior approval of the director of  
18 agriculture and shall provide therein that the director of  
19 agriculture has provided such approval. The director of agriculture  
20 or the director's designee shall attend the rule-making hearings  
21 conducted under chapter 34.05 RCW and shall assist in conducting  
22 those hearings. The authorities granted the department by these rules  
23 and by RCW 77.12.047(1)(g), 77.60.060, 77.60.080, 77.65.210,  
24 (~~77.115.020~~,) 77.115.030, and 77.115.040 constitute the only  
25 authorities of the department to regulate private sector cultured  
26 aquatic products and aquatic farmers as defined in RCW 15.85.020.  
27 Except as provided in subsection (3) of this section, no action may  
28 be taken against any person to enforce these rules unless the  
29 department has first provided the person an opportunity for a  
30 hearing. In such a case, if the hearing is requested, no enforcement  
31 action may be taken before the conclusion of that hearing.  
32 (3) The rules adopted under this section shall specify the  
33 emergency enforcement actions that may be taken by the department,  
34 and the circumstances under which they may be taken, without first  
35 providing the affected party with an opportunity for a hearing.  
36 Neither the provisions of this subsection nor the provisions of  
37 subsection (2) of this section shall preclude the department from  
38 requesting the initiation of criminal proceedings for violations of  
39 the disease inspection and control rules.

1 (4) A person shall not violate the rules adopted under subsection  
2 (2) or (3) of this section or violate RCW 77.115.040.

3 (5) In administering the program established under this section,  
4 the department shall use the services of a pathologist licensed to  
5 practice veterinary medicine.

6 (6) The director in administering the program shall not place  
7 constraints on or take enforcement actions in respect to the  
8 aquaculture industry that are more rigorous than those placed on the  
9 department or other fish-rearing entities.

10 (7) The department must implement this section consistent with  
11 section 2 of this act.

12 **Sec. 5.** RCW 77.115.030 and 2000 c 107 s 124 are each amended to  
13 read as follows:

14 (1) The director shall consult regarding the disease inspection  
15 and control program established under RCW 77.115.010 with federal  
16 agencies and Indian tribes to assure protection of state, federal,  
17 and tribal aquatic resources and to protect private sector cultured  
18 aquatic products from disease that could originate from waters or  
19 facilities managed by those agencies.

20 (2) With regard to the program, the director may enter into  
21 contracts or interagency agreements for diagnostic field services  
22 with government agencies and institutions of higher education and  
23 private industry.

24 (3) The director shall provide for the creation and distribution  
25 of a roster of biologists having a specialty in the diagnosis or  
26 treatment of diseases of fish or shellfish. The director shall adopt  
27 rules specifying the qualifications which a person must have in order  
28 to be placed on the roster.

29 (4) The department must implement this section consistent with  
30 section 2 of this act.

31 **Sec. 6.** RCW 77.115.040 and 2011 c 339 s 37 are each amended to  
32 read as follows:

33 (1) All aquatic farmers, as defined in RCW 15.85.020, shall  
34 register with the department. The application fee is one hundred five  
35 dollars. The director shall assign each aquatic farm a unique  
36 registration number and develop and maintain in an electronic  
37 database a registration list of all aquaculture farms. The department  
38 shall establish procedures to annually update the aquatic farmer

1 information contained in the registration list. The department shall  
2 coordinate with the department of health using shellfish growing area  
3 certification data when updating the registration list.

4 (2) Registered aquaculture farms shall provide the department  
5 with the following information:

6 (a) The name of the aquatic farmer;

7 (b) The address of the aquatic farmer;

8 (c) Contact information such as telephone, fax, web site, and  
9 email address, if available;

10 (d) The number and location of acres under cultivation, including  
11 a map displaying the location of the cultivated acres;

12 (e) The name of the landowner of the property being cultivated or  
13 otherwise used in the aquatic farming operation;

14 (f) The private sector cultured aquatic product being propagated,  
15 farmed, or cultivated; and

16 (g) Statistical production data.

17 (3) The state veterinarian shall be provided with registration  
18 and statistical data by the department.

19 (4) The department must implement this section consistent with  
20 section 2 of this act.

21 **Sec. 7.** RCW 77.125.030 and 2001 c 86 s 3 are each amended to  
22 read as follows:

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

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

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

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

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

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

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

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

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

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

27 (8) The department must implement this section consistent with  
28 section 2 of this act.

29 **Sec. 8.** RCW 77.12.047 and 2017 c 159 s 2 are each amended to  
30 read as follows:

31 (1) The commission may adopt, amend, or repeal rules as follows:

32 (a) Specifying the times when the taking of wildlife, fish, or  
33 shellfish is lawful or unlawful.

34 (b) Specifying the areas and waters in which the taking and  
35 possession of wildlife, fish, or shellfish is lawful or unlawful.

36 (c) Specifying and defining the gear, appliances, or other  
37 equipment and methods that may be used to take wildlife, fish, or  
38 shellfish, and specifying the times, places, and manner in which the  
39 equipment may be used or possessed.

1 (d) Regulating the importation, transportation, possession,  
2 disposal, landing, and sale of wildlife, fish, shellfish, or seaweed  
3 within the state, whether acquired within or without the state.  
4 However, this authority must be exercised consistent with sections 2  
5 and 12 of this act. Additionally, the rules of the department must  
6 prohibit any person, including department staff, from translocating a  
7 live elk from an area with elk affected by hoof disease to any other  
8 location except:

9 (i) Consistent with a process developed by the department with  
10 input from the affected federally recognized tribes for translocation  
11 for monitoring or hoof disease management purposes; or

12 (ii) Within an elk herd management plan area affected by hoof  
13 disease.

14 (e) Regulating the prevention and suppression of diseases and  
15 pests affecting wildlife, fish, or shellfish.

16 (f) Regulating the size, sex, species, and quantities of  
17 wildlife, fish, or shellfish that may be taken, possessed, sold, or  
18 disposed of.

19 (g) Specifying the statistical and biological reports required  
20 from fishers, dealers, boathouses, or processors of wildlife, fish,  
21 or shellfish.

22 (h) Classifying species of marine and freshwater life as food  
23 fish or shellfish.

24 (i) Classifying the species of wildlife, fish, and shellfish that  
25 may be used for purposes other than human consumption.

26 (j) Regulating the taking, sale, possession, and distribution of  
27 wildlife, fish, shellfish, or deleterious exotic wildlife.

28 (k) Establishing game reserves and closed areas where hunting for  
29 wild animals or wild birds may be prohibited.

30 (l) Regulating the harvesting of fish, shellfish, and wildlife in  
31 the federal exclusive economic zone by vessels or individuals  
32 registered or licensed under the laws of this state.

33 (m) Authorizing issuance of permits to release, plant, or place  
34 fish or shellfish in state waters.

35 (n) Governing the possession of fish, shellfish, or wildlife so  
36 that the size, species, or sex can be determined visually in the  
37 field or while being transported.

38 (o) Other rules necessary to carry out this title and the  
39 purposes and duties of the department.

1 (2)(a) Subsections (1)(a), (b), (c), (d), and (f) of this section  
2 do not apply to private tideland owners and lessees and the immediate  
3 family members of the owners or lessees of state tidelands, when they  
4 take or possess oysters, clams, cockles, borers, or mussels,  
5 excluding razor clams, produced on their own private tidelands or  
6 their leased state tidelands for personal use.

7 (b) "Immediate family member" for the purposes of this section  
8 means a spouse, brother, sister, grandparent, parent, child, or  
9 grandchild.

10 (3) Except for subsection (1)(g) of this section, this section  
11 does not apply to private sector cultured aquatic products as defined  
12 in RCW 15.85.020. Subsection (1)(g) of this section does apply to  
13 such products.

14 **Sec. 9.** RCW 90.48.220 and 1993 c 296 s 1 are each amended to  
15 read as follows:

16 (1) For the purposes of this section "marine finfish rearing  
17 facilities" means those private and public facilities located within  
18 the salt water of the state where finfish are fed, nurtured, held,  
19 maintained, or reared to reach the size of release or for market  
20 sale.

21 (2) Not later than October 31, 1994, the department shall adopt  
22 criteria under chapter 34.05 RCW for allowable sediment impacts from  
23 organic enrichment due to marine finfish rearing facilities.

24 (3) Not later than June 30, 1995, the department shall adopt  
25 standards under chapter 34.05 RCW for waste discharges from marine  
26 finfish rearing facilities. In establishing these standards, the  
27 department shall review and incorporate, to the extent possible,  
28 studies conducted by state and federal agencies on waste discharges  
29 from marine finfish rearing facilities, and any reports and other  
30 materials prepared by technical committees on waste discharges from  
31 marine finfish rearing facilities. The department shall approve or  
32 deny discharge permit applications for marine finfish rearing  
33 facilities within one hundred eighty days from the date of  
34 application, unless a longer time is required to satisfy public  
35 participation requirements in the permit process in accordance with  
36 applicable rules, or compliance with the requirements of the state  
37 environmental policy act under chapter 43.21C RCW. The department  
38 shall notify applicants as soon as it determines that a proposed  
39 discharge meets or fails to comply with the standards adopted



1 pursuant to this section, or if a time period longer than one hundred  
2 eighty days is necessary to satisfy public participation requirements  
3 of the state environmental policy act.

4 (4) The department may adopt rules to exempt marine finfish  
5 rearing facilities not requiring national pollutant discharge  
6 elimination system permits under the federal water pollution control  
7 act from the discharge permit requirement.

8 (5) The department must implement this section consistent with  
9 section 3 of this act.

10 NEW SECTION. Sec. 10. (1) The departments of ecology, natural  
11 resources, and fish and wildlife must continue the existing effort to  
12 update guidance and informational resources to industry and  
13 governments for planning and permitting commercial marine net pen  
14 aquaculture.

15 (2) The effort must utilize new scientific information that has  
16 emerged since the current state guidance that dates from the late  
17 1980s through 1990, and address topics including local shoreline  
18 permitting, water quality, impacts on native fish, shellfish, and  
19 wildlife, and interagency coordination in permitting, inspections,  
20 and enforcement. The guidance must be designed to eliminate  
21 commercial marine net pen escapement and negative impacts to water  
22 quality and native fish, shellfish, and wildlife.

23 (3) The guidance and resources must be completed by June 30,  
24 2019.

25 (4) This section expires December 31, 2020.

26 **Sec. 11.** RCW 50.04.075 and 2011 c 4 s 12 are each amended to  
27 read as follows:

28 (1) With respect to claims with an effective date prior to July  
29 1, 2012, "dislocated worker" means any individual who:

30 (a) Has been terminated or received a notice of termination from  
31 employment;

32 (b) Is eligible for or has exhausted entitlement to unemployment  
33 compensation benefits; and

34 (c) Is unlikely to return to employment in the individual's  
35 principal occupation or previous industry because of a diminishing  
36 demand for their skills in that occupation or industry.

37 (2) With respect to claims with an effective date on or after  
38 July 1, 2012, "dislocated worker" means any individual who:

1 (a) Has been involuntarily and indefinitely separated from  
2 employment as a result of a permanent reduction of operations at the  
3 individual's place of employment, (~~(or)~~) has separated from a  
4 declining occupation, or has separated from employment as a result of  
5 this act; and

6 (b) Is eligible for or has exhausted entitlement to unemployment  
7 compensation benefits.

8 NEW SECTION. **Sec. 12.** A new section is added to chapter 77.12  
9 RCW to read as follows:

10 (1) For marine finfish aquaculture of Atlantic salmon authorized  
11 or permitted consistent with section 2 of this act, the facility  
12 operator must hire, at their own expense, a marine engineering firm  
13 approved by the department to conduct inspections. Inspections must  
14 occur approximately every two years, when net pens are fallow, and  
15 must include topside and mooring assessments related to escapement  
16 potential, structural integrity, permit compliance, and operations.

17 (2) Any net pen facility must be found to be in good working  
18 order to receive fish.

19 (3) If the facility is found to be in imminent danger of collapse  
20 or release of Atlantic salmon, the director may require the operator  
21 to remove fish or deny a fish transfer permit.

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