

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

4 ADOPTED 2/29/96

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 AOPTED 2/29/96

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."

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