

FINAL BILL REPORT

SHB 1057

C 386 L 03

Synopsis as Enacted

Brief Description: Creating the license suspension review committee.

Sponsors: By House Committee on Fisheries, Ecology & Parks (originally sponsored by Representatives Hatfield, Buck, Blake and Kessler).

House Committee on Fisheries, Ecology & Parks
Senate Committee on Parks, Fish & Wildlife

Background:

A commercial fishing violation is generally punishable as either a misdemeanor, gross misdemeanor, or a felony. Misdemeanor violations are punishable by up to 90 days in jail and a fine of up to \$1,000. Gross misdemeanors are punishable by up to one year in jail and a fine of up to \$5,000, and felonies can result in a prison sentence of up to 10 years and a fine of up to \$20,000.

In addition to criminal sanctions, the Director of the Department of Fish and Wildlife (Department) must suspend all commercial fishing privileges for a person who is convicted of two gross misdemeanors or felonies involving commercial fishing within a five-year period. Suspended licenses may not be transferred or used by an alternate operator. The Department may also issue a life suspension if it finds willful or wanton disregard for the conservation of fish or wildlife.

Commercial fishing licenses must be applied for or renewed by December 31 of each year. However, this deadline does not apply if a license or permit was not renewed because of the death of the license holder. If this occurs, the surviving spouse, estate, or estate beneficiary must be given a reasonable opportunity to renew the license or permit.

Summary:

The Director of the Department has discretionary authority to suspend a person's privileges to participate in a particular commercial fishery if that person has been convicted of two or more "qualifying commercial violations" within a three-year period. Suspensions may not exceed one year and a suspended license may not be transferred or used by an alternate operator if the person committing the violations is the license holder, and not an alternate operator. Any suspension is in addition to the criminal penalties attached to the underlying criminal violation.

A commercial fishing violation can be judged as a "qualifying commercial violation" a number of ways; however, all qualifying commercial violations must first be either a gross misdemeanor or a felony. To qualify, certain violations must involve a specific minimum amount of harvested product. For shellfish harvesters, including crab, all qualifying commercial violations must involve at least 50 individual unlawfully harvested shellfish, and those unlawful shellfish must make up at least 6 percent of the total harvest.

For a violation of regulations for fish, other than groundfish and coastal pelagic baitfish, to qualify as a minimum commercial fishing violation, the total weight of the unlawful portion of the harvest must be greater than 6 percent of the total harvest, and the unlawful portion of the harvest must be valued at greater than \$250. Violations of groundfish and coastal pelagic baitfish fisheries are considered qualifying violations if the unlawfully harvested individuals total greater than 10 percent of the total catch and are valued at more than \$500. Alternatively, for a groundfish or coastal pelagic baitfish species that is categorized as over-fished by the National Marine Fisheries Service, a harvest volume that is greater than 10 percent of the harvest limit allowed by the Department for that fishery is also considered a qualifying violation.

Some violations are considered to be qualifying commercial violations regardless of the amount of product involved. These violations are: fishing without a license, chartering without a license, using unlawful gear or an unlawful method, using a non-designated vessel, fishing at an improper time, participating in a treaty fishery, using illegal nets, and using a commercial vessel for recreational pursuits.

In addition to fishers who have been convicted of two qualifying commercial violations within three years, the Director of the Department may recommend license suspension if one violation is judged by the Director to be of a severe magnitude. The Director may also recommend license suspension for an individual that has been convicted of a shellfish violation involving 500 or more unlawfully harvested shellfish valued at greater than \$2,500, if the quantity of unlawful shellfish totals more than 20 percent of the harvest.

Any commercial fisher that is issued a suspension order from the Director of the Department may appeal that suspension to the License Suspension Review Committee (Committee). The Committee is appointed by the Fish and Wildlife Commission (Commission) and is composed of two Department employees and three commercial fishers from different counties. In addition, the Commission can name up to four alternative members that may vote when one of the regular members is unavailable or has been recused.

The Committee must hear and decide on all appeals within three months, during which time the members can collect information and hear testimony regarding any extenuating circumstances surrounding a violation. The majority decision of the Committee is a recommendation to the Director of the Department, and the Committee may suggest

waiving, decreasing, or increasing the suspension length set by the Director.

Fishers that receive a suspension notice from the Director of the Department have 31 days to file an appeal with the Committee. After 31 days the right to an appeal is considered waived and the suspension period commences.

The attorney in fact, guardian, spouse, estate, or beneficiary of a fisher who has died or become incapacitated may renew that fisher's commercial license within 180 days.

Votes on Final Passage:

House 97 0
Senate 49 0 (Senate amended)
House (House refused to concur)
Senate 46 0 (Senate amended)
House 91 0 (House concurred)

Effective: July 27, 2003
May 20, 2003 (Section 5)