

ESHB 1696 - S COMM AMD

By Committee on Natural Resources, Ocean & Recreation

ADOPTED 04/11/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 77.15 RCW
4 to read as follows:

5 The fish and wildlife enforcement reward account is created in the
6 custody of the state treasurer. All receipts from criminal wildlife
7 penalty assessments under RCW 77.15.420 must be deposited into the
8 account. The department may accept money or personal property from
9 persons under conditions requiring the property or money to be used
10 consistent with the intent of expenditures from the fish and wildlife
11 enforcement reward account. Expenditures from the account may be used
12 only for investigation and prosecution of fish and wildlife offenses,
13 to provide rewards to persons informing the department about violations
14 of this title and rules adopted under this title, and for other valid
15 enforcement uses as determined by the commission. Only the director or
16 the director's designee may authorize expenditures from the account.
17 The account is subject to allotment procedures under chapter 43.88 RCW,
18 but an appropriation is not required for expenditures.

19 **Sec. 2.** RCW 77.15.070 and 2000 c 107 s 231 are each amended to
20 read as follows:

21 (1) Fish and wildlife officers and ex officio fish and wildlife
22 officers may seize without warrant boats, airplanes, vehicles,
23 motorized implements, conveyances, gear, appliances, or other articles
24 they have probable cause to believe have been held with intent to
25 violate or used in violation of this title or rule of the commission or
26 director. However, fish and wildlife officers or ex officio fish and
27 wildlife officers may not seize any item or article, other than for
28 evidence, if under the circumstances, it is reasonable to conclude that
29 the violation was inadvertent. The property seized is subject to

1 forfeiture to the state under this section regardless of ownership.
2 Property seized may be recovered by its owner by depositing with the
3 department or into court a cash bond or equivalent security equal to
4 the value of the seized property but not more than (~~twenty-five~~) one
5 hundred thousand dollars. Such cash bond or security is subject to
6 forfeiture in lieu of the property. Forfeiture of property seized
7 under this section is a civil forfeiture against property and is
8 intended to be a remedial civil sanction.

9 (2) In the event of a seizure of property under this section,
10 jurisdiction to begin the forfeiture proceedings shall commence upon
11 seizure. Within fifteen days following the seizure, the seizing
12 authority shall serve a written notice of intent to forfeit property on
13 the owner of the property seized and on any person having any known
14 right or interest in the property seized. Notice may be served by any
15 method authorized by law or court rule, including service by certified
16 mail with return receipt requested. Service by mail is deemed complete
17 upon mailing within the fifteen-day period following the seizure.

18 (3) Persons claiming a right of ownership or right to possession of
19 property are entitled to a hearing to contest forfeiture. Such a claim
20 shall specify the claim of ownership or possession and shall be made in
21 writing and served on the director within forty-five days of the
22 seizure. If the seizing authority has complied with notice
23 requirements and there is no claim made within forty-five days, then
24 the property shall be forfeited to the state.

25 (4) If any person timely serves the director with a claim to
26 property, the person shall be afforded an opportunity to be heard as to
27 the person's claim or right. The hearing shall be before the director
28 or director's designee, or before an administrative law judge appointed
29 under chapter 34.12 RCW, except that a person asserting a claim or
30 right may remove the matter to a court of competent jurisdiction if the
31 aggregate value of the property seized is more than five thousand
32 dollars. The department may settle a person's claim of ownership prior
33 to the administrative hearing.

34 (5) The hearing to contest forfeiture and any subsequent appeal
35 shall be as provided for in chapter 34.05 RCW, the administrative
36 procedure act. The seizing authority has the burden to demonstrate
37 that it had reason to believe the property was held with intent to
38 violate or was used in violation of this title or rule of the

1 commission or director. The person contesting forfeiture has the
2 burden of production and proof by a preponderance of evidence that the
3 person owns or has a right to possess the property and:

4 (a) That the property was not held with intent to violate or used
5 in violation of this title; or

6 (b) If the property is a boat, airplane, or vehicle, that the
7 illegal use or planned illegal use of the boat, airplane, or vehicle
8 occurred without the owner's knowledge or consent, and that the owner
9 acted reasonably to prevent illegal uses of such boat, airplane, or
10 vehicle.

11 (6) A forfeiture of a conveyance encumbered by a perfected security
12 interest is subject to the interest of the secured party if the secured
13 party neither had knowledge of nor consented to the act or omission.
14 No security interest in seized property may be perfected after seizure.

15 (7) If seized property is forfeited under this section the
16 department may retain it for official use unless the property is
17 required to be destroyed, or upon application by any law enforcement
18 agency of the state, release such property to the agency for the use of
19 enforcing this title, or sell such property, and deposit the proceeds
20 to the ~~((wildlife fund, as provided for in RCW 77.12.170))~~ fish and
21 wildlife enforcement reward account created in section 1 of this act.

22 **Sec. 3.** RCW 77.15.370 and 2001 c 253 s 38 are each amended to read
23 as follows:

24 (1) A person is guilty of unlawful recreational fishing in the
25 first degree if:

26 (a) The person takes, possesses, or retains two times or more than
27 the bag limit or possession limit of fish or shellfish allowed by any
28 rule of the director or commission setting the amount of food fish,
29 game fish, or shellfish that can be taken, possessed, or retained for
30 noncommercial use;

31 (b) The person fishes in a fishway; ~~((or))~~

32 (c) The person shoots, gaffs, snags, snares, spears, dipnets, or
33 stones fish or shellfish in state waters, or possesses fish or
34 shellfish taken by such means, unless such means are authorized by
35 express rule of the commission or director; or

36 (d) The person fishes for or possesses a fish listed as threatened

1 or endangered in 50 C.F.R. Sec. 17.11 (2002), unless fishing for or
2 possession of such fish is specifically allowed under federal or state
3 law.

4 (2) Unlawful recreational fishing in the first degree is a gross
5 misdemeanor.

6 **Sec. 4.** RCW 77.15.410 and 1999 c 258 s 3 are each amended to read
7 as follows:

8 (1) A person is guilty of unlawful hunting of big game in the
9 second degree if the person:

10 (a) Hunts for, takes, or possesses big game and the person does not
11 have and possess all licenses, tags, or permits required under this
12 title;

13 (b) Violates any rule of the commission or director regarding
14 seasons, bag or possession limits, closed areas including game
15 reserves, closed times, or any other rule governing the hunting,
16 taking, or possession of big game; or

17 (c) Possesses big game taken during a closed season for that big
18 game or taken from a closed area for that big game.

19 (2) A person is guilty of unlawful hunting of big game in the first
20 degree if the person was previously convicted of any crime under this
21 title involving unlawful hunting, killing, possessing, or taking big
22 game, and within five years of the date that the prior conviction was
23 entered the person:

24 (a) Hunts for big game and does not have and possess all licenses,
25 tags, or permits required under this title;

26 (b) Acts in violation of any rule of the commission or director
27 regarding seasons, bag or possession limits, closed areas including
28 game reserves, or closed times; or

29 (c) Possesses big game taken during a closed season for that big
30 game or taken from a closed area for that big game.

31 (3)(a) Unlawful hunting of big game in the second degree is a gross
32 misdemeanor. Upon conviction of an offense involving killing or
33 possession of big game taken during a period of time when hunting for
34 the particular species is not permitted, or in excess of the bag or
35 possession limit, the department shall revoke all hunting licenses and
36 tags and order a suspension of hunting privileges for two years.

1 (b) Unlawful hunting of big game in the first degree is a class C
2 felony. Upon conviction, the department shall revoke all hunting
3 licenses or tags (~~((involved in the crime))~~) and the department shall
4 order the person's hunting privileges suspended for (~~((two))~~) ten years.

5 **Sec. 5.** RCW 77.15.420 and 1998 c 190 s 62 are each amended to read
6 as follows:

7 (1) If a person is convicted of violating RCW 77.15.410 and that
8 violation results in the death of wildlife listed in this section, the
9 court shall require payment of the following amounts for each animal
10 killed or possessed. This shall be a criminal wildlife penalty
11 assessment that shall be paid to the clerk of the court and distributed
12 each month to the state treasurer for deposit in the (~~((public safety~~
13 ~~and education))~~) fish and wildlife enforcement reward account created in
14 section 1 of this act.

- 15 (a) Moose, mountain sheep, mountain
16 goat, and all wildlife species
17 classified as endangered by rule
18 of the commission, except for
19 mountain caribou and grizzly
20 bear as listed under (d) of this
21 subsection \$4,000
- 22 (b) Elk, deer, black bear, and cougar... \$2,000
- 23 (c) Trophy animal elk and deer \$6,000
- 24 (d) Mountain caribou, grizzly bear, and
25 trophy animal mountain sheep... \$12,000

26 (2) No forfeiture of bail may be less than the amount of the bail
27 established for hunting during closed season plus the amount of the
28 criminal wildlife penalty assessment in subsection (1) of this section.

29 (3) For the purpose of this section a "trophy animal" is:

- 30 (a) A buck deer with four or more antler points on both sides, not
31 including eyeguards;
- 32 (b) A bull elk with five or more antler points on both sides, not
33 including eyeguards; or
- 34 (c) A mountain sheep with a horn curl of three-quarter curl or
35 greater.

1 For purposes of this subsection, "eyeguard" means an antler
2 protrusion on the main beam of the antler closest to the eye of the
3 animal.

4 (4) If two or more persons are convicted of illegally possessing
5 wildlife in subsection (1) of this section, the criminal wildlife
6 penalty assessment shall be imposed on them jointly and separately.

7 (5) The criminal wildlife penalty assessment shall be imposed
8 regardless of and in addition to any sentence, fines, or costs
9 otherwise provided for violating any provision of this title. The
10 criminal wildlife penalty assessment shall be included by the court in
11 any pronouncement of sentence and may not be suspended, waived,
12 modified, or deferred in any respect. This section may not be
13 construed to abridge or alter alternative rights of action or remedies
14 in equity or under common law or statutory law, criminal or civil.

15 (6) A defaulted criminal wildlife penalty assessment may be
16 collected by any means authorized by law for the enforcement of orders
17 of the court or collection of a fine or costs, including but not
18 limited to vacation of a deferral of sentencing or vacation of a
19 suspension of sentence.

20 (7) A person assessed a criminal wildlife penalty assessment under
21 this section shall have his or her hunting license revoked and all
22 hunting privileges suspended until the penalty assessment is paid
23 through the registry of the court in which the penalty assessment was
24 assessed.

25 (8) The criminal wildlife penalty assessments provided in
26 subsection (1) of this section shall be doubled in the following
27 instances:

28 (a) When a person is convicted of spotlighting big game under RCW
29 77.15.450;

30 (b) When a person has a previous conviction of a misdemeanor, gross
31 misdemeanor, or a felony violation under this title;

32 (c) When the person killed the animal in question with the intent
33 of bartering, selling, or otherwise deriving economic profit from the
34 animal or the animal's parts; or

35 (d) When a person kills the animal under the supervision of a
36 licensed guide.

1 **Sec. 6.** RCW 77.15.450 and 1998 c 190 s 27 are each amended to read
2 as follows:

3 (1) A person is guilty of spotlighting big game in the second
4 degree if the person hunts big game with the aid of a spotlight (~~(or)~~),
5 other artificial light, or night vision equipment while in possession
6 or control of a firearm, bow and arrow, or cross bow. For purposes of
7 this section, "night vision equipment" includes electronic light
8 amplification devices, thermal imaging devices, and other comparable
9 equipment used to enhance night vision.

10 (2) A person is guilty of spotlighting big game in the first degree
11 if:

12 (a) The person has any prior conviction for gross misdemeanor or
13 felony for a crime under this title involving big game including but
14 not limited to subsection (1) of this section or RCW 77.15.410; and

15 (b) Within ten years of the date that such prior conviction was
16 entered the person commits the act described by subsection (1) of this
17 section.

18 (3)(a) Spotlighting big game in the second degree is a gross
19 misdemeanor. Upon conviction, the department shall revoke all hunting
20 licenses and tags and order a suspension of the person's hunting
21 privileges for two years.

22 (b) Spotlighting big game in the first degree is a class C felony.
23 Upon conviction, the department shall order suspension of all
24 privileges to hunt wildlife for a period of (~~two~~) ten years.

25 (4) A person convicted under this section shall be assessed a
26 criminal wildlife penalty assessment as provided in RCW 77.15.420."

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27 On page 1, line 1 of the title, after "penalties;" strike the
28 remainder of the title and insert "amending RCW 77.15.070, 77.15.370,
29 77.15.410, 77.15.420, and 77.15.450; adding a new section to chapter
30 77.15 RCW; and prescribing penalties."

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