
**Agriculture & Natural Resources
Committee**

ESB 6821

Brief Description: Concerning fish and wildlife harvest management.

Sponsors: Senators Hatfield and Jacobsen.

Brief Summary of Engrossed Bill

- Expands the list of documents that the Washington Department of Fish and Wildlife does not have to disclose under the state's public records laws to include information received or accessed that is included in the confidentiality provisions of its joint enforcement agreement under the Magnuson-Stevens Fishery Conservation Act.
- Authorizes the Washington Department of Fish and Wildlife to purchase commercial fishing vessels, state-issued commercial fishing licenses, delivery permits, and charter boat licenses if the owner of the vessel and license has been substantially restricted from fishing due to compliance with a specific federal court decision.

Hearing Date: 2/25/08

Staff: Jason Callahan (786-7117).

Background:

Joint Enforcement Agreements with the Federal Government

The Magnuson-Stevens Fishery Conservation Act (MSFCA) was adopted by the United States Congress and serves as the primary law governing marine fisheries in federal waters. The MSFCA contains a provision that allows the governor of a state bordering the Pacific Ocean to request that the Secretary of the United States Department of Commerce (USDC) enter into a joint enforcement agreement with the state for the enforcement of fisheries laws in federal waters (16 U.S.C. 1861). A state is only eligible to be included in a joint enforcement agreement if the state can provide for confidentiality of data and information submitted to the state or the USDC under the MSFCA and the joint enforcement agreement (16 U.S.C. 1881a).

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.

If a state and the USDC enter into a joint enforcement agreement, the Secretary of the USDC must allocate funds to assist in the implementation of the joint enforcement agreement. Funding allocations must be fairly distributed to the various states operating under a joint enforcement agreement (16 U.S.C. 1861).

Currently, the Washington Department of Fish and Wildlife (WDFW) is operating under a joint enforcement agreement with the federal government under the MSFCA. The current joint enforcement agreement expires in September of 2008.

Public Disclosure and the WDFW

Unless a specific exemption exists, all state agencies are required to make available for inspection and copying all documents that contain information relating to the conduct of government or the performance of a governmental or proprietary function (RCW 42.56.070). Of the exemptions to the public disclosure laws, three broad categories of exemptions are specific to documents generated or maintained by the WDFW. The exempted information includes certain commercial fishing catch data, sensitive wildlife data, and certain personally identifying information from individuals who purchase a commercial or recreational hunting or fishing license (RCW 42.56.430).

All documents maintained by the WDFW otherwise exempted are eligible for public disclosure.

State Purchasing of Fishing Licenses and Vessels

The WDFW was authorized in the 1970's to purchase commercial fishing vessels, state-issued commercial fishing licenses, delivery permits, and charter boat licenses if the owner of the vessel had been substantially restricted from fishing due to compliance with two specific federal court orders relating to the management of fishery resources between the state and tribal governments (RCW 77.80.020). All purchased licenses were required to be permanently retired (RCW 77.80.030).

A qualified marine surveyor was responsible for determining the price paid for the state purchases, up to a maximum set by the WDFW (RCW 77.80.030). Purchased vessels were eligible for resale by the WDFW; however, purchased vessels were not able to be resold to the original owner of the original owner's family for further use in commercial fisheries (RCW 77.80.040).

The "Rafeedie Decision"

Pursuant to a federal district court decision, Washington shares management authority over shellfish management with tribal co-managers [US v. Washington, 873 F. Supp 1422 (1994) , often referred to as the "Rafeedie decision" after the judge who decided the case]. The Rafeedie decision and a later decision [US v. Washington, 898 F. Supp 1453 (1995)], describe how the court expects the state and the tribes to share equal portions of the sustainable harvest biomass of any shellfish species. The state and tribal co-managers are directed by the court to enter into management plans to implement the decision and to comply with the terms of all management plans.

Summary of Bill:

Public Disclosure and the WDFW

The list of documents that the WDFW does not have to disclose under the state's public records laws is expanded to include information received or accessed by the WDFW included in the confidentiality provisions of its joint enforcement agreement under the MSFCA.

State Purchasing of Fishing Licenses and Vessels

The WDFW is authorized to purchase commercial fishing vessels, state-issued commercial fishing licenses, delivery permits, and charter boat licenses if the owner of the vessel and license has been substantially restricted from fishing due to compliance with the Rafeedie Decision.

The conditions and requirements of the original vessel and license buyback program are applied to the new purchases, including the valuation and limitation on further sales of vessels and requirements for the permanent retirement of purchased vessels.

Appropriation: None.

Fiscal Note: Requested on February 21, 2008.

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