

# SENATE BILL REPORT

## ESB 6821

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As Amended by House, March 7, 2008

**Title:** An act relating to the disclosure of certain fish and wildlife information.

**Brief Description:** Exempting certain information obtained by the department of fish and wildlife from disclosure under chapter 42.56 RCW.

**Sponsors:** Senators Hatfield and Jacobsen.

**Brief History:**

**Committee Activity:** Natural Resources, Ocean & Recreation: 2/4/08, 2/6/08 [DP].  
Passed Senate: 2/19/08, 44-3.

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### SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

**Majority Report:** Do pass.

Signed by Senators Jacobsen, Chair; Hatfield, Vice Chair; Morton, Ranking Minority Member; Fraser, Hargrove, Rockefeller, Spanel, Stevens and Swecker.

**Staff:** Karen Epps (786-7424)

**Background:** The Magnuson-Stevens Fishery Conservation and Management Act is the primary law governing marine fisheries management in United States federal waters. The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSA Reauthorization) mandates the use of annual catch limits and accountability measures to end overfishing, provides for widespread market-based fishery management through limited access programs, and calls for increased international cooperation.

Washington State's public disclosure laws require that agencies make available all public records for public inspection and copying, unless a record falls within an exemption to public disclosure. The Legislature has declared by statute that such laws are to be interpreted so as to liberally construe public disclosure requirements and narrowly construe exemptions.

RCW 42.56.430 provides for exemptions from public disclosure for certain information relating to fish and wildlife. One exemption includes commercial fishing catch data when the data identifies specific catch location, timing, or methodology and the release would result in an unfair commercial disadvantage. This exemption does allow for the release of this information to government agencies concerned with the management of fish and wildlife.

Another exemption applies to sensitive wildlife data obtained by the Department of Fish and Wildlife (DFW). The exemption does allow, however, the release of sensitive wildlife data to

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government agencies concerned with the management of fish and wildlife resources. Examples of sensitive wildlife data include: nesting sites or specific locations of endangered, threatened, or sensitive species; radio frequencies used in, or locational data generated by, telemetry studies; and certain location data that could compromise the viability of a specific fish or wildlife population.

The third exemption applies to personally identifying information of a person who obtains a recreational license. However, this information may be released to government agencies concerned with the management of fish and wildlife, the Department of Social and Health Services, the Department of Licensing, and law enforcement agencies.

DFW currently has specific authority to administrate commercial fishery license and vessel buyback programs (buyback programs). DFW may purchase items including current commercial licenses, commercial fishing vessels, and appurtenant gear. DFW may only implement its existing commercial fishery buyback authority if the license holder has been substantially restricted in fishing as a result of a 1974 judicial decision commonly known as the Boldt decision. In that decision the court ruled, and appellate courts and related cases have upheld the doctrine, that treaties reserve the right of Washington treaty tribes to half the harvestable fish passing through their usual and accustomed fishing areas.

A 1994 federal court decision, known as the Rafeedie decision, held that Washington's treaty tribes' right to harvest fish includes the right to harvest shellfish.

In 2007 the Legislature directed DFW to develop a proposed fishery buyback program for the coastal crab commercial fleet. The proposed program was to explore funding alternatives that involve federal funding, state funding, industry funding, and combinations of these sources. The proposed program also was to include elements necessary for the administration of the program.

**Summary of Engrossed Bill:** An exemption is added to the public records act protecting information that DFW receives or accesses under the MSA Reauthorization, but that cannot be disclosed due to confidentiality requirements in the MSA Reauthorization, from being disclosed pursuant to the public records act.

DFW's authority to administrate buyback programs is expanded to include commercial fishery license holders restricted in fishing as a result of the Rafeedie decision.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Federal law requires DFW to protect certain information collected under the MSA Reauthorization. This bill would accomplish that by adding an exemption to the Public Records Act. Some potential negatives if this bill does pass include placing fishermen in a competitive disadvantage, impairing enforcement by DFW, and the possible loss of federal funding.

**Persons Testifying:** PRO: Mike Cenci, DFW.

**House Amendment(s):** Requires that the federal government must provide funding before DFW may purchase commercial fishing vessels, licenses, delivery permits, and charter boat licenses if the license or permit holder was substantially restricted in harvesting shellfish.

Makes technical changes.