

SENATE BILL REPORT

EHB 2957

As of February 19, 2018

Title: An act relating to reducing escape of nonnative finfish from marine finfish aquaculture facilities.

Brief Description: Reducing escape of nonnative finfish from marine finfish aquaculture facilities.

Sponsors: Representatives Lytton, Peterson, Robinson, Wilcox, Taylor, Stambaugh, Sawyer, Chapman, Pollet and Stanford.

Brief History: Passed House: 2/14/18, 67-31.

Committee Activity: Agriculture, Water, Natural Resources & Parks: 2/19/18.

Brief Summary of Bill

- Prohibits the Department of Natural Resources (DNR) from entering into a new, or renewing or extending an existing, aquatics land lease or use authorization that allows nonnative marine finfish aquaculture as an authorized use.
- Prohibits specified state regulatory agencies from authorizing or permitting activities associated with the use of marine net pens for nonnative marine finfish aquaculture after the expiration date for the existing aquatic lands lease.
- Creates a reoccurring facility inspection process for operations involving marine finfish aquaculture.
- Directs specified state agencies to update existing guidance and resources on planning for and permitting commercial marine net pen aquaculture.
- Specifies that separation from employment as a result of the bill is a qualifying event for purposes of the Training Benefits Program.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Staff: Curt Gavigan (786-7437)

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.

Background: Leases and Use Authorizations for State-Owned Aquatic Lands. The Legislature has designated the DNR as the manager of state-owned aquatic lands. In managing these lands, DNR must support a balance of statutory goals including encouraging public access, fostering water-dependent uses, utilizing renewable resources, protecting the environment, and generating revenue.

DNR has general leasing authority for aquatic lands. The Legislature has directed DNR, however, to favor water-dependent uses. A water dependent use is a use that cannot logically exist in any location but on water. Aquaculture leases may last up to 30 years in length.

State Permitting and Authorization for Commercial Marine Finfish Aquaculture. In addition to federal and local permits, state agencies administer several permits and authorizations that apply to commercial marine finfish aquaculture activities. These include, among others:

- national Pollutant Discharge Elimination System (NPDES) permits administered by the Department of Ecology (Ecology) to regulate pollution discharges;
- marine Finfish Aquaculture permits administered by Department of Fish and Wildlife (DFW), which also require an approved escape prevention, reporting, and recapture plan; and
- fish Transport permits administered by DFW to protect aquaculture products and native finfish from disease.

Summary of Bill: Aquatic Lands Use Authorization. DNR may not allow nonnative marine finfish aquaculture as an authorized use under any new lease or use authorization. Additionally, DNR may not renew or extend a lease or use authorization where the use includes nonnative marine finfish aquaculture.

State Issued Permits. Certain agencies and permitting programs may only authorize or permit activities associated with the use of marine net pens for nonnative marine finfish aquaculture if it is performed under an existing DNR aquatic lands lease. In these cases, the agencies may not authorize or permit these activities or operations after the expiration date of that existing aquatic lands lease. This requirement covers authorization or permits issued:

- by DFW, generally;
- by Ecology, for NPDES permits;
- under statutes regulating aquatic farm disease inspection and control, specifically;
- under statutes governing marine finfish aquaculture escapement prevention, management planning, and recapture administered by DFW, specifically; and
- for fish and wildlife possession and transportation administered by DFW, specifically.

Other Provisions. Ecology, DNR, DFW, and the Department of Agriculture must update guidance and informational resources on commercial marine net pen aquaculture designed to assist industry and government agencies in planning and permitting these activities. In doing so, the agencies must seek advice and technical assistance from a variety of entities, including federally recognized tribes, federal agencies, and higher educational programs. This project must be completed by November 1, 2019. The guidance must address the following topics:

- local shoreline permitting and water quality;
- the state of the science concerning marine finfish aquaculture impacts on native species;

- best management practices for the safe and effective operation of finfish aquaculture in the marine environment;
- interagency coordination in permitting, inspections, and enforcement; and
- recommendations for future legislative oversight of marine finfish net pen aquaculture.

A re-occurring facility inspection process is created for operations involving marine finfish aquaculture. Inspections must be done at the operators expense and at approximately two year intervals. A net pen facility must be found in good working order to receive fish. If the facility is in imminent danger of collapse or release of finfish, DFW may require the operator to remove fish or deny a fish transfer permit.

Separation from employment as a result of this bill is specifically listed as a qualifying event to make someone a dislocated worker for purposes of the Training Benefits Program. This program, administered by the Employment Security Department, provides extended unemployment benefits while a person participates in approved training for another career.

An intent section is included.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: Salmon recovery has been an ongoing project for the state and been a huge investment. We do not want to risk it through either competition or disease by net pen aquaculture. Salmon are important from both a cultural and economic perspective, and as food for orcas. The industry dumps waste directly into Puget Sound. The science is clear on this subject, and there are competition and health risks. New information has come out since hearings on the senate bill about facility mismanagement.

CON: State agencies have characterized the threat from these operations as relatively minor. The bill will not bring back native fish, but will ban an industry and impact many jobs in rural communities. While the 2017 incident resulted in action and this bill against a Canadian company, previously releases were not similarly punished. This anti-Canadian bias is unlawful under Chapter 11 of NAFTA. Atlantic salmon are a profitable and healthy aquaculture product.

OTHER: We are for the intent of the bill, but question the additional study items and suggest instead that the state look at upland operations. Ecology and DFW will implement whatever the Legislature enacts. There is a suggestion to define what nonnative means to make sure it is properly interpreted.

Persons Testifying: PRO: Representative Mike Chapman, Prime Sponsor; Jennifer Towne, Cypress Island Home Owners Association.; Jamie Glasgow, Our Sound Our Salmon; Craig Engelking, Lummi Nation; Gail Gatton, Audubon Washington; Robert Duff, Governor's Office; Bruce Wishart, Puget Sound Keeper, Sierra Club; Jeff Parsons, Puget Sound Partnership; Robert Upham, Communications Officer, Terra Tipi History & Social Justice; Chiara D'Angelo-Patricio, Executive Director Students for the Salish Sea.

CON: Troy Nichols, Cooke Aquaculture; Joel Richardson, Cooke Aquaculture; Dan Swecker, Washington Fish Growers Association; Jack Field, Washington Fish Growers Association; Mary Catherine McAleer, Association of Washington Business.

OTHER: Nate Pamplin, Washington DFW; Jim Hedrick, Muckleshoot Indian Tribe; Jason Norberg, Department of Ecology; James Michel, Coastal Watershed Institute.

Persons Signed In To Testify But Not Testifying: No one.