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DIVISION II, COURT OF APPEALS
OF THE STATE OF WASHINGTON

PROTECT ZANGLE COVE; COALITION TO PROTECT PUGET
SOUND HABITAT; AND WILD FISH CONSERVANCY,

Petitioner-Appellants

v.

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE; JOE
STOHR, Acting Director of the Washington Department of Fish and
Wildlife; and PACIFIC NORTHWEST AQUACULTURE, LLC,

Respondents

ON APPEAL FROM THURSTON COUNTY SUPERIOR COURT
(Hon. Christopher Lanese)

APPELLANTS' REPLY BRIEF

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I. INTRODUCTION

WDFW asserts that aquatic farmers have an extraordinary and expansive immunity, not only from the requirements of the Hydraulic Code, but from many other laws of general applicability designed to protect Washington's wildlife. WDFW draws that conclusion from a single sentence in a subsection of a chapter on fish disease control, which it reads in isolation from the other provisions of the Aquatic Act, removed from its historical framework, and detached from the regulatory scheme of the Hydraulic Code.

But in statutory construction, *context matters*. When evaluated within the proper context, WDFW's already strained interpretation becomes incoherent. It would render much of the Aquatic Act superfluous, manufacture false conflict between the Aquatic Act and the Hydraulic Code, create chaos within the statutory scheme, raise Constitutional concerns, and lead to absurd consequences that the Legislature surely did not intend.

WDFW's interpretation of the Aquatic Act is thus far from "plain." It is entirely implausible. It should be rejected in favor of a statutory construction that gives meaning to the words the Legislature selectively used, and puts them in the context of a "harmonious, total statutory scheme" that "maintains the integrity" of both the Aquatic Act and the Hydraulic Code. *See State v. Wright*, 84 Wn.2d 645, 650, 529 P.2d 453 (1974).

II. ARGUMENT

A. WDFW Ignores Context Needed to Evaluate Contested Issues

WDFW's evaluation of its responsibilities under the Hydraulic Code focuses obsessively on a single sentence in a different code chapter on an unrelated subject. *See, e.g.*, WDFW Resp. at 9 (“This case presents a simple question of how this Court should interpret one sentence in RCW 77.115.010(2).”). WDFW examines these few words without their historical or factual context and in isolation from the rest of the statutory scheme, including the Hydraulic Code and other provisions of the Aquatic Act.

The courts have firmly rejected such a myopic approach, emphasizing that the “meaning of words in a statute is not gleaned from those words alone.” *Burns v. City of Seattle*, 161 Wn.2d 129, 146, 164 P.3d 475 (2007). Even when trying to ascertain the “plain meaning” of a statute, a court must consider ““all the terms and provisions of the act in relation to the subject of the legislation, the nature of the act, [and] the general object to be accomplished[.]”” *Id.* at 146 (internal citation omitted).

Consistent with its disregard of context, WDFW asserts that the background information Petitioners provide about the aquaculture industry is irrelevant. *See* WDFW Resp. at 2. But these facts provide some of the context the Court needs to evaluate the “consequences that would result from construing the particular statute in one way or another.” *Burns*, 161 Wn.2d at

146; *Dep't of Ecology v. Campbell & Gwinn*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002) (background facts properly considered as part of a statute's context).

At the other extreme, Taylor and PNA (collectively, "Taylor") quibble about factual details. Taylor Resp. at 5-6. Petitioners decline to engage on these small distinctions. Whether the aquaculture industry has expanded rapidly or gradually, nobody disputes that it could occupy as much as 33% of the state's shorelines by 2022; even if Taylor could show that rows of plastic tubes provide the same environmental benefits as eelgrass beds, nobody disputes that geoduck facilities alter natural habitats and affect fish life; and although shellfish farmers may not *always* clear tidelands of native plants and animals, nobody disputes that commercial aquaculture commonly engages in practices with significant potential to harm native fish. *See id.* at 5-6; OB at 6-9. Taylor does not, and cannot, dispute that the state's aquaculture industry (1) is massive and growing; (2) impacts aquatic ecosystems; and (3) includes a variety of customary practices that the Hydraulic Code views as a potential threat to fish, and which it was designed to regulate. OB at 6-9. Those fundamental and uncontested facts are essential in evaluating the "consequences" that would result from the statutory interpretation advanced by WDFW and Taylor. *See Burns*, 161 Wn.2d at 146.

B. Analysis of this Case Must *Begin* with the Hydraulic Code

WDFW virtually ignores the law at the center of this case, devoting

less than a page of analysis to the Hydraulic Code itself. *See* WDFW Resp. at 17. Indeed, WDFW goes so far as to assert that the provisions of the Code have “no impact” on its conclusions about how it should be applied. *Id.* Such a contention betrays fundamental principles of statutory construction, which require the Court to “begin with the plain meaning of the statute[.]” *Lenander v. Dep’t of Ret. Sys.*, 186 Wn.2d 393, 405, 377 P.3d 199 (2016)

1. *Hydraulic Code Regulates Aquatic Construction by “Any Person”*

The Hydraulic Code’s language is absolute and unambiguous:

Except as provided in [certain enumerated exceptions], in the event that ***any person*** or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

RCW 77.55.021(1) (emphasis added). The Code applies equally to “any person,” regardless of their profession or the purpose of their project. Although the Code does not exempt any *people*, it lists certain types of projects that are exempt or subject to special consideration. OB at 14-16, 21-22. As WDFW concedes, aquaculture is not among them. WDFW Resp. at 17. The Code thus requires aquatic farmers, like anyone else, to obtain HPA permits before “performance of work that will use, divert, obstruct, or change the natural flow or bed” of any state waters. RCW 77.55.011(11).

2. *WDFW’s Strained Interpretation Creates Statutory Conflict*

If possible “without distortion of the language used,” it is the Court’s

“duty” to “reconcile” the unequivocal mandate of the Code with the provisions of the Aquatic Act, so as “to give effect to each of them.” *See State v. Fagalde*, 85 Wn.2d 730, 736, 539 P.2d 86 (1975).

WDFW does not dispute that the Hydraulic Code requires permits for hydraulic projects related to aquaculture. Instead, it contends that the Aquatic Act rendered this requirement meaningless by removing its authority to enforce the Code against aquatic farmers. WDFW Resp. at 17. WDFW does not address the incongruity a decision to continue to require aquatic farmers to obtain HPA permits, while depriving anybody of the power to issue them. Meanwhile, Taylor insists its interpretation of the Aquatic Act does not conflict with the Hydraulic Code, because the Code “is a general requirement that operates only when WDFW otherwise has authority over the activities in question.” Taylor Resp. at 10; *see also id.* at 31.

Nonsense. The Hydraulic Code is *the source of WDFW’s authority* to regulate all hydraulic projects that it does not exempt. As the Supreme Court found last year, the “scope of the Department’s permitting authority” is dependent on the nature of the activities, but on their “reasonably certain effects . . . on waters of the state.” *See Spokane Cty. v. Dep’t of Fish & Wildlife*, 192 Wn.2d 453, 455, 430 P.3d 655 (2018). If another statute limits WDFW’s authority under the Code based on the identity of persons, or the goals of their activities, that conflicts with the Code’s universal application

to “any person” engaged in projects affecting state waters.

There is also a fundamental conflict between the Hydraulic Code’s singular purpose to protect “fish life” from potentially harmful hydraulic construction (RCW 77.55.021(1), (7)(a)), and another statute that would render the Code unenforceable as to construction that will soon occupy 33% of the state’s shorelines—including some of its most sensitive fish habitats. *See* OB 6-9. Such an interpretation would severely undermine the Hydraulic Code’s ability to achieve its core mission. *See Burns*, 161 Wn.2d at 146).

Under Petitioners’ interpretation, there is no such conflict: It reads the Hydraulic Code and the Aquatic Act so that they are “complementary, rather than in conflict with each other.” *Lenander*, 186 Wn.2d at 412.

3. *WDFW’s Interpretation Creates Chaotic Statutory Scheme*

WDFW’s reading would also create a chaotic, rather than a “harmonious,” statutory scheme. *Wright*, 84 Wn.2d at 650. It would be impossible to understand the Hydraulic Code by reading the entirety of the Code at Chapter 77.55, “Construction Projects in State Waters.” A full understanding would require reference to the fourth sentence of the second subsection of a statute in an unrelated Chapter, 77.115, “Aquaculture Disease Control.” *See* WDFW Resp. at 17 (citing RCW 77.115.010(2)). Because that chapter does not reference the Hydraulic Code, it would then require cross-referencing all six statutes listed in RCW 77.115.010(2) to determine that the

Hydraulic Code is not listed, and a further deduction that by thus limiting WDFW's authority to regulate "aquatic farmers," the Legislature rendered the Hydraulic Code a nullity as to aquaculture. *Id.*

WDFW asserts that this provision universally constrains WDFW's authority, but nevertheless insists that "it makes sense" for the Legislature to hide this limitation in a subsection of a fish disease control statute. *Id.* at 13. It does not explain why the Legislature would not have placed such a fundamental limitation at the beginning of Title 77, within the sections that outline the agency's authority. *See* RCW 77.04.012 (current mandate of WDFW); Ex. 10 (RCW 75.08.012, .014 (1985)) (describing duties of department and authority of director when Aquatic Act was adopted).

WDFW recognizes that under its reading, Sections 18 and 20 of the Aquatic Act are superfluous. WDFW Resp. at 18 n. 3. By the same logic, later amendments inserting similar exemptions were also unnecessary. *See, e.g.,* Ex. 11 (LAWS OF 1993, Reg. Sess., ch. 340 §§ 46(1), 51(1)) (providing new exemptions for "private sector cultured aquatic products" from Fisheries statutes not listed in RCW 77.115.010(2)). WDFW's interpretation even renders meaningless the limitation on WDFW's rulemaking authority in Section 17. As Taylor observes, if Section 8 of the Act strictly prohibited WDFW from regulating aquatic farmers and aquatic products beyond a discrete list of statutes, it was "not necessary for the legislature to also

expressly forbid WDFW from making rules regulating aquatic farmers”—or aquatic products. *See* Taylor Resp. at 20.

WDFW explains this duplication away as the Legislature’s effort to “make double-sure that the restriction of authority was fully understood by the agency and by citizens.” WDFW Resp. at 18 n. 3. It does not address why the Legislature would have wanted to make “double sure” that the agency did not require aquatic farmers to get a fishing license, but did not exhibit the same concern in ensuring that the agency and the industry understood that Fisheries could no longer enforce the Hydraulic Code against aquaculture.

The Revised Code of Washington is not a game of “gotcha.” Citizens are not expected to explore a “winding path of connect-the-dots provisions” to understand an independent section of the Code. *See King v. Burwell*, 135 S. Ct. 2480, 2495 (2015) (rejecting idea that the viability of the Affordable Care Act could turn on a “sub-sub-sub section” of the U.S. tax code). Indeed, the state Constitution prohibits amending acts without fully setting them forth, to avoid exactly such “confusion, ambiguity, and uncertainty in the statutory law through the existence of separate and disconnected legislative provisions . . . scattered through different volumes or different portions of the same volume.” *Amalgamated Transit v. State*, 142 Wn.2d 183, 245, 11 P.3d 762 (2000) (examining WASH. CONST. art. 2 § 37) (internal citation omitted).

It is hard to imagine the Legislature meant to violate this principle by

covertly curtailing a significant environmental law through an oblique reference in an obscure disease control statute. And neither the Legislature, WDFW nor the industry were aware of this supposed exemption, either when it was passed or for 20 years afterwards. OB at 13-15. Such confusion highlights another ““mischief designed to be remedied”” by Article 2, Section 37: ““the enactment of amendatory statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effect, and the public . . . failed to become apprised of the changes made in the laws.”” *Amalgamated Transit*, 142 Wn.2d at 246-47 (internal citations omitted).

By contrast, the statutory interpretation forwarded by Petitioners assumes the Legislature did not intend to send its citizens on an Easter egg hunt through Title 77. Rather, the full effect and reach of Code, along with its exemptions, can be understood solely by reference to its provisions. *See, e.g.*, FINAL B. REP. ON SECOND SUBSTITUTE H.B. 1346, 59th Leg., Reg. Sess. (Wash. 2005) (CP 450) (2005 amendments to the Code, including consolidating all its exemptions, were meant to increase “predictability”).

C. Plain Language of Aquatic Act Does Not Create Exception

The most natural interpretation of the Aquatic Act assumes the Legislature meant exactly what it said: When the Legislature chose to limit Fisheries’ authority to regulate “aquatic farmers” and “aquatic products,” but not “aquaculture,” it did so because it *meant* to limit the agency’s authority

to regulate “aquatic farmers” and “aquatic products,” but *not* “aquaculture.” OB at 26-31. The Legislature further made its meaning clear through explicit changes to all affected provisions of the code. *Id.* at 24-25.

The plain meaning of Section 8 is thus that it does *not* limit the agency’s authority to regulate, or make rules regarding, “aquaculture”—the “process” of cultivating “aquatic products.” RCW 15.85.020(1); *see State v. Nelson*, 195 Wn. App. 261, 265-66, 381 P.3d 84 (2016) (the legislature “intends to use the words it uses and intends *not* to use words it does not use”) (internal citation omitted). Because the Aquatic Act amended several other statutes to add exemptions, but did not amend the Hydraulic Code, the plain meaning is that it did not intend to amend the Hydraulic Code. OB at 24-25

WDFW and Taylor urge the Court to attribute no meaning to the Legislature’s selective use of defined terms—in fact, by their reasoning, it was superfluous to even list “aquatic products” in Section 8. Rather, they contend that any regulation of “aquaculture” (and by extension, “aquatic products”) inevitably involves regulation of “aquatic farmers.” WDFW Resp. at 12 (WDFW “cannot regulate an abstract ‘process’ without an actor to apply for and receive the permit.”); Taylor Resp. at 13 (“People and products cannot be regulated in a vacuum[.]”).

Since people are responsible for the vast majority of the actions, products, and conflicts governed by law, virtually all laws could be said to

regulate people. But this truism obscures important distinctions. Some laws regulate people because of their characteristics as people: children must go to school because they are children; teachers need certificates to be teachers; and before the Aquatic Act, “aquaculturists” needed licenses to sell fish. 1985 ACT § 20. Such laws are distinct from laws of general applicability that govern anyone engaging in an activity: No one would characterize a speed limit as a regulation of parents or veterinarians, even if parents and veterinarians are among those people who sometimes drive too fast.

Taylor asserts there is “no support” for such a distinction. Taylor Br. at 13. But of course government at all levels can, and commonly does, make distinctions between people and the activities they engage in, and products and the processes that produce them. Examples abound:

- The General Agreement on Tariffs and Trade (“GATT”) allows countries to impose varied restrictions based on differences in products, but not based on the processes used in making those products. *See* World Trade Organization, WTO Rules and Environmental Policies, at: https://www.wto.org/english/tratop_e/envir_e/envt_rules_gatt_e.htm (last visited Sept. 12, 2019).
- The U.S. Department of Agriculture’s (“USDA”) National Organic Program regulates the processes used to grow and handle organic food, but not the nature of the food itself. *See* USDA, Agricultural Marketing Service, Organic Regulations, at: <https://www.ams.usda.gov/rules-regulations/organic> (last visited Sept. 12, 2019).
- Local authorities may impose regulations on the activity of driving, but must defer to the state Department of Licensing to regulate who may receive a driver’s license and what cars they may drive. *See* RCW 46.01.011; RCW 46.08.010, .020.

- The state Liquor and Cannabis Control Board licenses cannabis producers and regulates the distribution and sale of cannabis. RCW 69.50.325(1). Yet the state Department of Agriculture sets standards for the process of growing certified cannabis. RCW 15.125.020.

Such differentiations are particularly commonplace in environmental regulations. Environmental agencies typically have jurisdiction over classes of people or products, but do have general authority over activities or processes that may harm the environment. For example, the Environmental Protection Agency (“EPA”) does not regulate clothing manufacturers or clothing, but does regulate waste that is a byproduct of creating textiles. *See* EPA, RCRA in Focus: Textile Manufacturing (2002), at: <https://www.epa.gov/sites/production/files/2015-01/documents/k02028.pdf> (last visited Sept. 12, 2019). And the state Department of Ecology has no special authority over farmers or crops, but does regulate the process of clearing fields through burning. *See* RCW 70.94.6528, WAC 173-430-010.

Similarly, WDFW has no authority to regulate farmers or corn, homeowners or houses, or restaurateurs or food. But it may grant HPA permits to a farmer constructing a culvert to drain a corn field, a homeowner building a seawall to protect a house, or a restaurateur erecting a pier for dining. There is no law removing WDFW’s authority to regulate farmers, homeowners, or restaurant owners, because no law ever granted such authority. But Fisheries did have specific authority to regulate aquatic farmers

and aquatic products before the Aquatic Act. The Aquatic Act removed that special jurisdiction, but by doing so, did not curtail WDFW's authority to regulate hydraulic projects, regardless of who was undertaking them.

D. Broad Immunity for Aquatic Farmers Results in Absurd and Potentially Unconstitutional Consequences

1. WDFW's Position Goes Far Beyond AG Opinion or WAC

The theory WDFW now advances goes far beyond the logic of the 2007 AG Opinion, or the interpretation reflected in WAC 220-660-040(2)(1). The 2007 AG Opinion recognized the distinction between regulating a "product" and a "process," and attempted to give meaning to the restriction of WDFW's authority only as to "aquatic farmers" and "aquatic products." Ex. 5 at AR952. The AG Opinion erroneously concluded that WDFW cannot regulate hydraulic projects related to "geoduck planting and harvesting," because that would be a regulation of an "aquatic product." *Id.* But it would still require an HPA permit for "construction work" at an aquatic farm, "because the permit regulates construction; it does not regulate aquaculture products." *Id.* at AR957 n.4; *see* discussion at OB 30-31.

WAC 220-660-040(2)(1) does not attempt to capture this confusing distinction, instead exempting the "[i]nstallation or maintenance of tideland and floating private sector commercial fish and shellfish culture facilities"—which presumably includes some "construction" projects the AG Opinion would allow WDFW to regulate. Ex. 1, AR 18-19. WDFW's

rule would still require aquatic farmers to obtain HPA permits for “accessory hydraulic structures, such as bulkheads or boat ramps.” *Id.*

WDFW abandons any attempt to distinguish between different types of hydraulic projects. Instead, WDFW now takes the absolute position that it *only* may regulate aquatic farmers (or their activities) through the disease-control rules and six specific statutes listed in RCW 77.115.010(2). WDFW Resp. at 7; *id.* at 11 (“only means only”); *id.* at 20 (this is an “express statutory limit” on WDFW jurisdiction over aquatic farmers and their activities).

2. *WDFW’s Extreme Interpretation Leads to Nonsensical Results*

WDFW’s logic has no limiting principle. That is why the AG Opinion rejected this position, because it would lead to “absurd results.” *See* Ex. 5 at AR952 (“for example, WDFW could not regulate an aquatic farmer who is hunting”). By WDFW’s logic, Section 8 of the Aquatic Act would not only excuse aquatic farmers from compliance with the Hydraulic Code, but also immunize them from any law of general applicability for which WDFW has enforcement jurisdiction, and which is not listed in RCW 77.115.010(2). WDFW Resp. at 12-13. Aquatic farmers could disregard WAC 220-660-040(2)(l) and build accessory bulkheads and boat ramps without an HPA permit. WDFW officers could not prevent aquatic farmers from killing predators with unlawful traps, explosives, or poisons (RCW 77.15.150, .194); taking wild fish or game out of season, without a license, using

banned methods, or in excess of limits (RCW 77.15.370, .380, .430, .410); or killing endangered fish and wildlife (RCW 77.15.120, .130).¹).

None of these statutes is listed under RCW 77.115.010(2). Just like the Hydraulic Code, they are all laws of general applicability that regulate *activities*, and not *people*—however, by WDFW’s logic, it would still be a “person” whom WDFW would seek to hold accountable for violations. WDFW Resp. at 12. In fact, it would not even matter whether these activities were related to aquaculture, as long as they were performed by an “aquatic farmer.” *See* Taylor Resp. at 14 (WDFW’s authority over aquatic farmers is limited without reference to specific activities, encompassing both “aquaculture and non-aquaculture activities alike”). Meanwhile, all other types of farmers would still need an HPA permit before engaging in projects that affect state waters, and would be obligated to follow state wildlife laws.

This result is not only nonsensical; it may also violate the Equal Protection Clause of the Fourteenth Amendment and the Immunities Clause of the state constitution. *See* U.S. CONST. amend. XIV, § 1; WASH. CONST. art. 1 § 12. Non-aquatic farmers are not a suspect class entitled to heightened scrutiny, but under even minimal scrutiny there must be “some basis in

¹ Ironically, some of these laws could be enforced against aquatic farmers by law enforcement entities such as the local police—but *not* by specially trained WDFW enforcement officers. This would lead to the bizarre result that although WDFW enforcement officers have general police powers (RCW 77.15.075), they would not have such powers against aquatic farmers.

reality” to discriminate between “those within and without the class,” and the distinction must bear a “rational relation to the purposes of the challenged statute.” *See Associated Grocers v. State*, 114 Wn.2d 182, 187, 787 P.2d 22 (1990) (unconstitutional to tax wholesalers and distributors differently).

It is hard to imagine any rationale for making one class of farmer immune from generally applicable environmental and wildlife laws, and, of course, neither the text nor the legislative history of the Aquatic Act offer any such rationale. Such selective immunity also bears no “rational relation” to the purposes of the Aquatic Act, which merely sought to give aquaculture the “same status as other agricultural activities.” 1985 ACT §1. Farmers engaged in other agricultural activities must abide by the Hydraulic Code. Rather than bringing aquatic farmers to an equal level with their land-based counterparts, as the Aquatic Act intended, WDFW’s position would elevate aquatic farmers above all other agriculture interests, by inexplicably making them functionally immune from laws everyone else must follow.

WDFW’s position must be rejected because it is absurd, and clearly not what the Legislature intended. *See Glaubach v. Regence Blueshield*, 149 Wn.2d 827, 833, 74 P.3d 115 (2003) . The Court should also reject this interpretation because there are “grave doubts” about its constitutionality. *Hammack v. Monroe St. Lumber Co.*, 54 Wn.2d 224, 232, 339 P.2d 684 (1959); *see also State v. Dixon*, 78 Wn.2d 796, 804, 479 P.2d 931 (1971) (“If

a statute is susceptible of two or more interpretations . . . the court will, if possible, give it an interpretation which upholds its constitutionality.”).

E. Exemption Leads to Absurd Results in Context of 1985 Scheme

When properly viewed in the context of the 1985 statutory scheme, WDFW’s interpretation of Section 8 of the Aquatic Act would lead to other “unlikely, absurd, or strained consequences.” *Glaubach*, 149 Wn.2d at 833.

1. Removal of Fisheries Authority Would Have Been Meaningless

WDFW does not deny that if the Legislature meant to exempt aquatic farmers from the Hydraulic Code, it failed to do so in the context of the 1985 statutory scheme. *Campbell & Gwinn*, 146 Wn.2d at 11 (“legislators enact legislation in light of existing statutes”) (internal citation omitted). Under WDFW’s interpretation, Section 8 removed the authority of Fisheries, but the Department of Game retained the ability to enforce the Hydraulic Code against aquatic farmers until the departments merged in 1993. OB at 35-36.

WDFW makes no attempt to reconcile this anomaly.² And neither

² Taylor rattles off a series of explanations. Taylor Resp. at 24-25. Its observation that “most regulatory programs are administered by one rather than multiple agencies” might explain a decision to consolidate the program under one agency, but not a decision to retain joint jurisdiction except for aquatic farmers. And it begs the question of why any such change would not be made to the Hydraulic Code section providing for joint jurisdiction (*see* RCW 75.20.100 (1984) (CP 603)), or why the Legislature would not have addressed this split authority when it reaffirmed the joint jurisdiction the following year. *See* LAWS OF 1986, ch. 173, §1. More bizarre is the explanation that Fisheries was “perceived as uniquely hostile” to aquaculture. Although the Aquatic Act shifted primary responsibility for aquaculture to Agriculture, there is no indication it was to satisfy an irrational grudge. To the contrary, the Act gave Fisheries new responsibilities monitoring disease threats. 1985 ACT § 8.

WDFW nor Taylor explain what happened to Hydraulic Code authority when the departments merged. The statutes passed in 1993 and 1995 outlining the merger do not address any such distinction in authority under the Hydraulic Code—which suggests, once more, that the Legislature did not believe this distinction to exist. *See, generally*, LAWS OF 1993, 1st sp. s., ch. 2, §30 (CP 622); LAWS OF 1995, 1st Sp. Sess, ch. 2. Moreover, the Legislature intended the new agency to assume all authority of both Fisheries and Game, including “[r]egulatory authority for all user groups, including commercial users.” Ex. 12 (FINAL S.B. REP. ON S.B. 6074, 54th Leg., 1st Sp. Sess. (Wash. 1995)). As a result, even if the Aquatic Act removed Fisheries’ authority to enforce the Hydraulic Code, WDFW regained that authority after the merger.

2. *Aquatic Act Contemplates HPA Permits for Aquatic Farms*

It is also implausible that the Legislature would have suggested that clam farmers seek a permit in Section 19 of the Aquatic Act, which it simultaneously made impossible for them to obtain in Section 8. OB 33-34. WDFW and Taylor try to explain away this absurd result with an even more unlikely scenario: that by “clam farms” the Legislature meant only the harvest of wild clams. WDFW Resp. at 17-19; Taylor Resp. at 17-19.

That it is not what the Legislature said. A Court “must not add words where the legislature has chosen not to include them.” *Lake v. Woodcreek Homeowners Ass’n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). WDFW and

Taylor would slip the word “wild” in front of clams, so the provision would no longer apply to aquatic farms. *See* WDFW Resp. at 15; Taylor Resp. at 18 (“clam farm’ licenses were issued by DOF for wild, not cultivated, clams”).

At best, the authority cited by WDFW and Taylor shows that mechanical harvesters were *also* used to harvest wild clams. But by 1985, the cultivation of clams was well established as part of “clam farming.” CP 1227 (describing clam farming in the 1970s and 1980s). There is no question mechanical harvesters are commonly used to harvest cultivated clams. *See* CP 338, 340 at Figure 3-15. And the context of the Act suggests a “clam farm” is merely a subset of the broader defined term “aquatic farm.” 1985 ACT § 2(3) (clams are among the species cultivated on an aquatic farm).³ Indeed, it is absurd to suggest the Legislature would insert a new clause related *exclusively* to the harvest of wild shellfish into an Act whose title, preamble, and content make clear it relates exclusively to “aquatic farming.” *See* 1985 ACT, generally, and at 2033 (title and preamble).

F. Legislative History Shows No Intent to Exempt Aquaculture, or Acquiescence to Exemption

1. Legislature Did Not Intend to Exempt Aquatic Farmers

WDFW and Taylor concede there is no indication in the Aquatic

³ This is consistent with the definition of “farm”: “a tract of water reserved for the artificial cultivation of some aquatic life-form (an oyster).” *See Schuffenhauer v. Dep’t of Emp’t Sec.*, 86 Wn.2d 233, 239, 543 P.2d 343 (1975) (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (1971)) (workers harvesting wild clams did not work on clam “farms”).

Act's legislative history that the Legislature even *considered* exempting aquaculture from the Hydraulic Code. WDFW Resp. at 23; Taylor Resp. at 27. The legislative reports list the intended effects of the legislation in great detail, highlighting differences in vehicle licensing requirements, tax implications, fishing licenses, and even the change to the mechanical harvester license. *E.g.*, Ex. 13 (S.B. REP. ON S.B. 3067, 49th Leg., Reg. Sess. (Wash. 1985)). Nowhere in the bill reports, fiscal analyses, letters of support, or public testimony is there any discussion of immunizing aquatic farmers from Hydraulic Code enforcement.

This silence is a strong indication the Legislature did not intend to make such a major policy change. *See, e.g., Dewsnap v. Timm*, 502 U.S. 410, 419 (1992) (court reluctant to interpret vague language to “effect a major change . . . that is not the subject of at least some discussion in the legislative history”); *Sheet Metal Workers’ Int’l Ass’n v. Lynn*, 488 U.S. 347, 356 (1989) (“[h]ad Congress contemplated such a result, we would expect to find some discussion of it in the text of the [Act] or its legislative history”).

WDFW and Taylor make little attempt to explain this silence.⁴ In fact,

⁴ WDFW tentatively suggests that because the Legislature had explicitly extended hydraulic jurisdiction to marine waters just two years before, they “may not have viewed it worth highlighting.” WDFW Resp. at 24. To the contrary, that recent legislation suggests the importance of the Hydraulic Code, and its potential impact on salt-water construction projects, would have been more likely to be on the top of the Legislature’s mind. WDFW also suggests that a legislative history of “animosity towards Fisheries’ regulation” is sufficient. *Id.* at 22. But that legislative history does not contain any complaints about enforcement of the Hydraulic Code. WDFW Resp. Attach. A at 206; Attach. B.

the additional legislative history submitted by WDFW only provides further support that the Legislature did not intend to curtail authority under the Hydraulic Code. The Final Legislative Report emphasizes that aquatic products are exempted from the Fisheries’ authority under the “food fish and shellfish” statutes—while in the same paragraph, mentioning that clam farms can obtain harvesting licenses under the “hydraulic project approval statute.” *See* WDFW Resp., Attachment A at 207. This differentiation between the “food fish and shellfish” statutes and the “hydraulic project approval statute” illustrates that the Legislature categorized the two Fisheries’ functions differently, and that it intended only to remove Fisheries’ authority over the “food fish and shellfish” statutes. *Id.*; *see also* Taylor Resp. at 15 (“Unlike other statutes that were amended in the AFA, the HPA statute did not reference food fish or shellfish products[.]”).

2. *Later Legislatures Did Not “Acquiesce” to Exemption*

Respondents say the Legislature acquiesced to the AG’s opinion that aquaculture was exempt from the Hydraulic Code. WDFW Resp. at 24; Taylor Resp. at 27. But an examination of the statutory history shows the opposite: The Legislature has consistently behaved as if no such exemption exists. *E.g.*, Ex. 7 (S.B. 6406, 62nd Leg., Reg. Sess., §§ 103(2)(1), (3)(b) (Wash. 2012) (proposing new HPA fee structure including classifications for aquaculture); Ex. 14 (S.B. 5466, 65th Leg., Reg. Sess., §§9(4)(a), (5)(b))

(Wash. 2017) (same, brought at the “request of” WDFW); OB at 16-17, 39.

The AG Opinion responded to an inquiry from Representative Patricia Lantz, who did not believe an exemption existed. *See* CP 532-36. In response to the Opinion, Rep. Lantz initiated legislation to “begin the process of developing a consistent, predictable regulatory program” to regulate shellfish aquaculture. Ex. 15 (H.B. 2220, 60th Leg., Reg. Sess. (Wash. 2007)).). As passed, the bill provided funding to study shellfish aquaculture, including “environmental effects,” and established a committee to recommend a regulatory system for shellfish aquaculture projects. Ex. 16 (S.S.H.B. 2220, 60th Leg., Reg. Sess., §§ 1(5)(a), 4(2)(a) (Wash. 2007)).).

WDFW contends that S.S.H.B. 2220 is a “model for application of the legislative acquiescence principle.” WDFW Resp. at 24.⁵ In fact, the opposite is true: This case is a “model” of a situation in which the principle of legislative acquiescence should *not* be applied.⁶ First, the AG Opinion to which the Legislature supposedly acquiesced was not issued until more than 20 years after passage of the Aquatic Act—during which time there was no indication from the Legislature, the agency, or the industry that any such

⁵ Even if the Court were to find any indication the Legislature acquiesced to the interpretation in 2007 AG Opinion, it is important to note this would not indicate any sort of acquiescence to the far more extreme interpretation that WDFW is advancing now. *See supra* at 13-14.

⁶ Even in the best circumstances, this doctrine must be applied with caution. *Cockle v. Labor & Indus.*, 142 Wn.2d 801, 812, 16 P.3d 583 (2001) (“legislative acquiescence can never be interpreted as permission to ignore or violate statutory mandates”).

exemption was thought to exist. *See Five Corners Family Farmers v. State*, 173 Wn.2d 296, 309, 268 P.3d 892 (2011) (rejecting significance of attorney general opinion issued decades after the legislation and contrary to earlier administrative interpretations). The Legislature that passed the Aquatic Act—and whose intent is relevant—was thus long gone by the time of the supposed acquiescence. *See Andrus v. Shell Oil Co.*, 446 U.S. 657, 666 n.8 (1980) (“the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one”) (internal citation omitted).

Second, there is no sign the 2007 Legislature agreed with the AG Opinion. To the contrary, it approved a study into the environmental effects of shellfish aquaculture, and requested recommendations a regulatory scheme. When a legislature forms a working group to study an issue, it “cannot be said to have acquiesced.” *Five Corners*, 173 Wn.2d at 309.

Finally, in order to achieve this “compromise” bill, Rep. Lantz fought a “perfect storm of property rights, environmental protection, and economic development.” *See* Ex. 17 (H.B. REP. ON S.S.H.B. 2220, 60th Leg., Reg. Sess. (Wash. 2007)). In such cases, the Legislature’s failure to take definitive action says less about agreement than the difficulty of passing legislation. *See* William N. Eskridge, Jr., *Interpreting Legislative Inaction*, 87 MICH. L. REV. 67, 104-108 (1988) (courts’ reliance on legislative acquiescence doctrine in such cases may exacerbate legislative dysfunction); *United States v. Dep’t of*

Mental Health, 785 F. Supp. 846, 851 (E.D. Cal. 1992) (legislative silence is reflective of a “political compromise” rather than “legislative intent”).

G. PNA Should be Explicitly Enjoined

Because the Hydraulic Code applies to aquaculture projects, a declaration should issue that PNA’s project requires an HPA permit. OB at 42-45.⁷ And because PNA has not obtained such a permit, it should be enjoined from further construction without one.⁸

Petitioners’ UDJA claim against PNA is not displaced by the APA: WDFW never took a final, appealable action on PNA’s permit application. CP 648. As a private party, PNA’s actions are not reviewable under the APA; cases in which petitioners sought a positive injunction against an *agency* are thus inapposite. *See* Taylor Resp. at 38-40. And while WDFW has discretion as to *remedies* for HPA violations, Taylor Resp. at 36-37, it has no discretion to exempt PNA from the permitting requirements of RCW 77.55.021.

Nor does Taylor meet its burden to show that “issues are identical” to prior proceedings giving rise to collateral estoppel. *Luisi Truck Lines, Inc. v.*

⁷ Since this action did not assert a private right of action under the Hydraulic Code, this case does not raise the issue of whether the Code would allow such an action. But Petitioners note that in addition to expressly granting the right of third parties the right to appeal HPA permit decisions (RCW 77.55.021(8)), the Hydraulic Code also provides that the specific listed remedies are “not exclusive and do not limit or abrogate any other civil or criminal penalty, remedy, or right available in law, equity, or statute.” RCW 77.55.470.

⁸ The record shows only that PNA has commenced farming, not that it has completed the project. *See* CP 246. The relief Appellants seek is thus prospective, not retroactive. In any event, Taylor’s arguments against “retroactive” application are premised on alleged “operational disruptions” not supported in the record. Taylor Resp. at 48.

Wash. Util. & Transp. Comm'n, 72 Wn.2d 887, 894, 435 P.2d 654 (1967).). The Thurston hearing decision on which Taylor relies applied the requirements of SEPA, ch. 43.21C RCW, and SMA, ch. 90.58 RCW. CP 1001-03. The legal rules for HPA permits are distinct. *Compare, e.g.* RCW 43.21C.031 (SEPA analyzes “those probable adverse environmental impacts which are significant”) *with* RCW 77.55.021 (no “significance” standard). If, as Taylor contends, PNA has already taken the steps to protect fish life that would be required by an HPA permit, it should be easily granted. But the HPA permit process is the proper route for that determination to be made.

The superior court did not reach the merits of the UDJA claim or the request for an injunction. As a result, Taylor’s Response raises issues not previously addressed, which are largely dependent on factual issues on which there have been no findings. At a minimum, it would be appropriate for the Court to remand to the superior court for factfinding on these issues.

III. CONCLUSION

WDFW has not only has the authority, but the duty, to protect declining wild fish populations from the potentially massive impact of industrial aquaculture construction. There is no statutory support for WDFW’s failure to fulfill this duty. Petitioners respectfully ask the Court to reverse the superior court, hold that WAC 220-660-040(2)(1) is invalid, and grant Petitioners’ requests for declaratory and injunctive relief.

RESPECTFULLY SUBMITTED this 16th day of September 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2019, I caused to be served a copy of the foregoing document to be delivered in the manner indicated below to the following persons at the following addresses:

Bob Ferguson, Attorney General Attn: Division of Fish, Wildlife and Parks 1125 Washington Street SE Olympia, WA 98501 NoelleC@atg.wa.gov JeanneR@atg.wa.gov fwdef@atg.wa.gov	<input checked="" type="checkbox"/> by JIS ECF <input checked="" type="checkbox"/> by Electronic Mail per Agreement <input type="checkbox"/> by Facsimile Transmission <input type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery
Samuel W. Plauce, IV Jesse G. Denike Plauche & Carr LLP 811 First Avenue, Suite 630 Seattle, WA 98104 Jesse@plauchecarr.com Billy@plauchecarr.com Sarah@plauchecarr.com	<input checked="" type="checkbox"/> by JIS ECF <input checked="" type="checkbox"/> by Electronic Mail per Agreement <input type="checkbox"/> by Facsimile Transmission <input type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery

DATED: September 16, 2019

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Index of Exhibits to Appellants' Reply Brief

Protect Zangle Cove, et al., v.

Washington Department of Fish and Wildlife, et al.

No. 52906-8-II

Ex. 10	RCW 75.08.012-.014 (1985)
Ex. 11	LAWS OF 1993, Reg. Sess., ch. 340
Ex. 12	FINAL S.B. REP. ON S.B. 6074, 54 th Leg., 1 st Sp. Sess. (Wash. 1995)
Ex. 13	S.B. REP. ON S.B. 3067, 49 th Leg., Reg. Sess. (Wash. 1985).
Ex. 14	S.B. 5466, 65 th Leg., Reg. Sess., §§9(4)(a), (5)(b)) (Wash. 2017)
Ex. 15	H.B. 2220, 60 th Leg., Reg. Sess. (Wash. 2007)
Ex. 16	S.S.H.B. 2220, 60 th Leg., Reg. Sess., §§ 1(5)(a), 4(2)(a) (Wash. 2007)
Ex. 17	H.B. REP. ON S.S.H.B. 2220, 60 th Leg., Reg. Sess. (Wash. 2007)

EXHIBIT 10

VOLUME 6
Titles 58 through 77

1985
REVISED CODE OF WASHINGTON

Published under authority of chapter 1.08 RCW.

Containing all laws of a general and permanent nature through the 1985 1st extraordinary session, which adjourned sine die June 11, 1985.

Title 75

FOOD FISH AND SHELLFISH

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- 75.10 Enforcement—Penalties.**
- 75.12 Unlawful acts.**
- 75.20 Construction projects in state waters.**
- 75.24 Shellfish.**
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- 75.30 License limitation programs.**
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- 75.48 Salmon enhancement facilities—Bond issue.**
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- 75.52 Volunteer cooperative fish and wildlife enhancement program.**
- 75.56 Salmon and steelhead trout—Management of resources.**
- 75.58 Aquaculture disease control.**
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Control of traffic along ocean beach highways for conservation of natural resources: RCW 43.51.680.

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Chapter 75.08

ADMINISTRATION

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- 75.08.010 Fisheries Code.
- 75.08.011 Definitions.
- 75.08.012 Duties of the department.
- 75.08.014 Authority of director to administer department—Qualifications of director.
- 75.08.020 Director—Research—Annual reports to governor and legislature—Proposals to reinstate salmon and steelhead in Tilton and Cowlitz rivers.
- 75.08.025 Agreements with department of defense.
- 75.08.040 Acquisition, use, and management of lands, water rights, rights of way, and personal property.
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- 75.08.230 Disposition of moneys collected—Proceeds from sale of food fish or shellfish—Unanticipated receipts.
- 75.08.245 Sale of surplus salmon eggs.
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Fisheries laboratory, appropriation: RCW 79.24.320.

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Minimum flows and levels—Departmental authority exclusive—Other recommendations considered—Report of minimum flow setting program: RCW 90.03.247.

Youth development and conservation committee, department's representative as member: RCW 43.51.520.

75.08.010 Fisheries Code. This title is known and may be cited as the "Fisheries Code of the State of Washington." [1983 1st ex.s. c 46 § 2; 1955 c 12 § 75.08.010. Prior: 1949 c 112 § 2; Rem. Supp. 1949 § 5780–200.]

75.08.011 Definitions. As used in this title or rules of the director, unless the context clearly requires otherwise:

- (1) "Director" means the director of fisheries.
- (2) "Department" means the department of fisheries.
- (3) "Person" means an individual or a public or private entity or organization. The term "person" includes local, state, and federal government agencies, and all business organizations.
- (4) "Fisheries patrol officer" means a person appointed and commissioned by the director, with authority to enforce this title, rules of the director, and other statutes as prescribed by the legislature. Fisheries patrol officers are peace officers.

(5) "Ex officio fisheries patrol officer" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio fisheries patrol officer" also includes wildlife agents, special agents of the national marine fisheries service, United States fish and wildlife special agents, state parks commissioned officers, department of natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.

(6) "To fish" and "to take" and their derivatives mean an effort to kill, injure, harass, or catch food fish or shellfish.

(7) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(8) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(9) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington–Oregon state boundary.

(10) "Resident" means a person who has for the preceding ninety days maintained a permanent abode within the state, has established by formal evidence an intent to continue residing within the state, and is not licensed to fish as a resident in another state.

(11) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(12) "Food fish" means those species of the classes Osteichthyes, Agnatha, and Chondrichthyes that shall not be fished for except as authorized by rule of the director. The term "food fish" includes all stages of development and the bodily parts of food fish species.

(13) "Shellfish" means those species of marine and freshwater invertebrates that shall not be taken except as authorized by rule of the director. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(14) "Salmon" means species of the genus *Oncorhynchus* and includes:

Scientific Name	Common Name
<i>Oncorhynchus tshawytscha</i>	Chinook salmon
<i>Oncorhynchus kisutch</i>	Coho salmon
<i>Oncorhynchus keta</i>	Chum salmon
<i>Oncorhynchus gorbuscha</i>	Pink salmon
<i>Oncorhynchus nerka</i>	Sockeye salmon

(15) "Commercial" means related to or connected with buying, selling, or bartering. Fishing for food fish or shellfish with gear unlawful for fishing for personal use, or possessing food fish or shellfish in excess of the limits permitted for personal use are commercial activities.

(16) "To process" and its derivatives mean preparing or preserving food fish or shellfish.

(17) "Personal use" means for the private use of the individual taking the food fish or shellfish and not for sale or barter.

(18) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or reel to which are attached no more than two single hooks or one artificial bait with no more than four multiple hooks. [1983 1st ex.s. c 46 § 4; 1975 1st ex.s. c 152 § 2; 1955 c 12 § 75.04.010. Prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780–100, part. Formerly RCW 75.04.010.]

75.08.012 Duties of the department. The department shall preserve, protect, perpetuate and manage the food fish and shellfish in state waters and offshore waters.

The department shall conserve the food fish and shellfish resources in a manner that does not impair the resource. In a manner consistent with this goal, the department shall seek to maintain the economic well-being and stability of the fishing industry in the state. The department shall promote orderly fisheries and shall enhance and improve recreational and commercial fishing in this state. [1983 1st ex.s. c 46 § 5; 1975 1st ex.s. c 183 § 1; 1949 c 112 § 3, part; Rem. Supp. 1949 § 5780–201, part. Formerly RCW 43.25.020.]

State policy regarding improvement of recreational salmon fishing: See note following RCW 75.25.100.

75.08.014 Authority of director to administer department—Qualifications of director. The director of fisheries shall supervise the administration and operation of the department of fisheries and perform the duties prescribed by law. The director may appoint and employ necessary personnel. The director may delegate, in writing, to department personnel the duties and powers necessary for efficient operation and administration of the department.

Only persons having general knowledge of the fisheries resources and commercial and recreational fishing industry in this state are eligible for appointment as director. The director shall not have a financial interest in the fishing industry or a directly related industry. [1983 1st ex.s. c 46 § 6; 1953 c 207 § 10. Prior: (i) 1933 c 3 § 5; 1921 c 7 § 116; RRS § 10874. (ii) 1949 c 112 § 3, part; Rem. Supp. 1949 § 5780–201, part. (iii) 1949 c 112 § 5; Rem. Supp. 1949 § 5780–204. Formerly RCW 43.25.010.]

75.08.020 Director—Research—Annual reports to governor and legislature—Proposals to reinstate salmon and steelhead in Tilton and Cowlitz rivers. (1) The director shall investigate the habits, supply, and economic use of food fish and shellfish in state and offshore waters.

(2) The director shall make an annual report to the governor on the operation of the department and the statistics of the fishing industry.

(3) The director shall provide a comprehensive annual report of all departmental operations to the legislature

EXHIBIT 11

1993
SESSION LAWS
OF THE
STATE OF WASHINGTON

REGULAR SESSION
FIFTY-THIRD LEGISLATURE
Convened January 11, 1993. Adjourned April 25, 1993.

1st SPECIAL SESSION
FIFTY-THIRD LEGISLATURE
Convened April 26, 1993. Adjourned May 6, 1993.



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Code Reviser

CHAPTER 340

[Senate Bill 5124]

COMMERCIAL FISHING LICENSES

Effective Date: 1/1/94

AN ACT Relating to commercial fishing licenses; amending RCW 75.28.010, 75.28.014, 75.28.020, 75.28.030, 75.28.040, 75.28.110, 75.28.113, 75.28.116, 75.28.120, 75.28.125, 75.28.130, 75.28.280, 75.28.290, 75.28.690, 75.28.287, 75.28.710, 75.30.050, 75.30.065, 75.30.070, 75.30.090, 75.30.100, 75.30.120, 75.30.125, 75.30.130, 75.30.140, 75.28.235, 75.28.245, 75.30.160, 75.30.170, 75.30.180, 75.30.210, 75.30.220, 75.30.240, 75.30.250, 75.08.230, 75.28.134, 75.24.100, 75.28.070, and 75.50.100; reenacting and amending RCW 75.28.095 and 75.08.011; adding new sections to chapter 75.28 RCW; adding new sections to chapter 75.30 RCW; adding new sections to chapter 75.12 RCW; creating new sections; recodifying RCW 75.28.070, 75.28.134, 75.28.235, 75.28.245, and 75.28.287; decodifying RCW 75.30.150; repealing RCW 75.28.012, 75.28.035, 75.28.060, 75.28.140, and 75.28.255; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the laws governing commercial fishing licensing in this state are highly complex and increasingly difficult to administer and enforce. The current laws governing commercial fishing licenses have evolved slowly, one section at a time, over decades of contention and changing technology, without general consideration for how the totality fits together. The result has been confusion and litigation among commercial fishers. Much of the confusion has arisen because the license holder in most cases is a vessel, not a person. The legislature intends by this act to standardize licensing criteria, clarify licensing requirements, reduce complexity, and remove inequities in commercial fishing licensing. The legislature intends that the license fees stated in this act shall be equivalent to those in effect on January 1, 1993, as adjusted under section 19, chapter 316, Laws of 1989.

Sec. 2. RCW 75.28.010 and 1991 c 362 s 1 are each amended to read as follows:

(1) Except as otherwise provided by this title, it is unlawful to engage in any of the following activities without a license or permit issued by the director (~~is required to~~):

- (a) Commercially fish for or take food fish or shellfish;
- (b) Deliver food fish or shellfish taken in offshore waters;
- (c) Operate a charter boat or commercial fishing vessel engaged in a fishery;
- (d) Engage in processing or wholesaling food fish or shellfish; or
- (e) (~~Operate~~) Act as a guide for salmon for personal use in freshwater rivers and streams, other than that part of the Columbia river below the bridge at Longview.

(2) (~~It is unlawful to~~) No person may engage in the activities described in subsection (1) of this section (~~(without having in possession)~~) unless the licenses or permits required by this title are in the person's possession, and the person is the named license holder or an alternate operator designated on the license.

(3) A valid Oregon license that is equivalent to a license under this title is valid in the concurrent waters of the Columbia river if the state of Oregon

recognizes as valid the equivalent Washington license. The director may identify by rule what Oregon licenses are equivalent.

(4) No license or permit is required for the production or harvesting of private sector cultured aquatic products as defined in RCW 15.85.020 or for the delivery, processing, or wholesaling of such aquatic products. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, the exemption from licensing or permit requirements established by this subsection applies only if the aquatic products are identified in conformance with those rules.

Sec. 3. RCW 75.28.014 and 1986 c 198 s 8 are each amended to read as follows:

~~((+)) The ((department may establish by rule license)) application deadline((s)) for ((types of gear and licensing districts. An applicant for)) a commercial ((salmon fishing)) license ((shall submit a license application in accordance with this subsection.~~

~~(a) If an application is postmarked or personally delivered to the department in Olympia by the application deadline, it shall be accompanied by the prescribed license fee.~~

~~(b) If an application is postmarked or personally delivered to the department in Olympia after the application deadline, it shall be accompanied by the prescribed license fee and a late application fee of two hundred dollars.~~

~~(2) Columbia River smelt license applications accompanied by the license fee shall be made in person or postmarked by January 10 of the license year)) or permit established in this chapter is December 31 of the calendar year for which the license or permit is sought. The department shall accept no license or permit applications after December 31 of the calendar year for which the license or permit is sought.~~

Sec. 4. RCW 75.28.020 and 1989 c 47 s 1 are each amended to read as follows:

(1) ~~((The department may only issue))~~ Except as otherwise provided in this title, a person as defined in RCW 75.08.011 may hold a commercial license ((to a person who)) established by this chapter.

(2) Except as otherwise provided in this title, an individual may hold a commercial license only if the individual is sixteen years of age or older and a bona fide resident of the United States. ((The deckhand license required by RCW 75.28.690 may be issued to persons under sixteen years of age. The department may only issue a commercial license to))

(3) A corporation may hold a commercial license only if it is authorized to do business in this state. ((A valid Oregon license which is comparable to a license under this title is valid in the concurrent waters of the Columbia River if the state of Oregon recognizes as valid the comparable Washington license.))

(4) No person may hold a limited-entry license unless the person meets the qualifications that this title establishes for the license.

Sec. 5. RCW 75.28.030 and 1983 1st ex.s. c 46 s 105 are each amended to read as follows:

(1) Except as otherwise provided in this title, the director shall issue commercial licenses and permits to a qualified person((;)) upon ((the receipt of a)) receiving a completed application accompanied by the required fee. ((Applications shall be submitted on forms provided by the department. Applicants for commercial licenses and permits shall indicate at the time of application the species of food fish or shellfish they intend to take and the type of gear they intend to use.))

(2) An application submitted to the department under this chapter shall contain the name and address of the applicant and any other information required by the department or this title. An applicant for a commercial fishery license, delivery license, or charter license may designate a vessel to be used with the license and up to two alternate operators.

(3) An application submitted to the department under this chapter shall contain the applicant's declaration under penalty of perjury that the information on the application is true and correct.

(4) Upon issuing a commercial license under this chapter, the director shall assign the license a unique number that the license shall retain upon renewal. The department shall use the number to record any commercial catch under the license. This does not preclude the department from using other, additional, catch record methods.

(5) The fee to replace a license that has been lost or destroyed is eleven dollars.

Sec. 6. RCW 75.28.040 and 1983 1st ex.s. c 46 s 108 are each amended to read as follows:

(1) A commercial license issued under this chapter permits the license holder to engage in the activity for which the license is issued in accordance with this title and the rules of the director.

(2) No security interest or lien of any kind, including tax liens, may be created or enforced in a license issued under this chapter.

(3) Unless otherwise provided in this title or rules of the director, commercial licenses and permits issued under this chapter expire at midnight on December 31st ((following their issuance and)) of the calendar year for which they are issued. In accordance with this title, licenses may be renewed annually upon application and payment of the prescribed license fees.

NEW SECTION. Sec. 7. A new section is added to chapter 75.28 RCW to read as follows:

VESSEL DESIGNATION. This section applies to all commercial fishery licenses, delivery licenses, and charter licenses.

(1) An applicant for a license subject to this section may designate a vessel to be used with the license. Except for emergency salmon delivery licenses, the director may issue a license regardless of whether the applicant designates a

vessel. An applicant may designate no more than one vessel on a license subject to this section.

(2) A license for a fishery that requires a vessel authorizes no taking or delivery of food fish or shellfish unless a vessel is designated on the license. A delivery license authorizes no delivery of food fish or shellfish unless a vessel is designated on the license.

(3) It is unlawful to take food fish or shellfish in a fishery that requires a vessel except from a vessel designated on a commercial fishery license for that fishery.

(4) It is unlawful to operate a vessel as a charter boat unless the vessel is designated on a charter license.

(5) No vessel may be designated on more than one commercial fishery license unless the licenses are for different fisheries. No vessel may be designated on more than one delivery license, on more than one salmon charter license, or on more than one nonsalmon charter license.

NEW SECTION. Sec. 8. A new section is added to chapter 75.28 RCW to read as follows:

CHANGES IN VESSEL DESIGNATION. This section applies to all commercial fishery licenses, delivery licenses, and charter licenses, except for emergency salmon delivery licenses.

(1) The holder of a license subject to this section may substitute the vessel designated on the license or designate a vessel if none has previously been designated if the license holder:

(a) Surrenders the previously issued license to the department;

(b) Submits to the department an application that identifies the currently designated vessel, the vessel proposed to be designated, and any other information required by the department; and

(c) Pays to the department a fee of twenty-two dollars.

(2) Unless the license holder owns all vessels identified on the application described in subsection (1)(b) of this section, the following restrictions apply to changes in vessel designation:

(a) The department shall change the vessel designation on the license no more than four times per calendar year.

(b) The department shall change the vessel designation on the license no more than once in any seven-day period.

NEW SECTION. Sec. 9. A new section is added to chapter 75.28 RCW to read as follows:

ALTERNATE OPERATOR DESIGNATION. This section applies to all commercial fishery licenses, delivery licenses, and charter licenses, except for whiting—Puget Sound fishery licenses and emergency salmon delivery licenses.

(1) The license holder may engage in the activity authorized by a license subject to this section. The holder of a license subject to this section may also designate up to two alternate operators for the license. A person designated as

an alternate operator must possess an alternate operator license issued under sections 23 and 25 of this act.

(2) The fee to change the alternate operator designation is twenty-two dollars.

NEW SECTION. Sec. 10. A new section is added to chapter 75.28 RCW to read as follows:

PERSONS WHO MAY USE A LICENSE. (1) Only the license holder and any alternate operators designated on the license may sell or deliver food fish or shellfish under a commercial fishery license or delivery license. A commercial fishery license or delivery license authorizes no taking or delivery of food fish or shellfish unless the license holder or an alternate operator designated on the license is present or aboard the vessel.

(2) Only the license holder and any alternate operators designated on the license may operate a vessel as a charter boat.

NEW SECTION. Sec. 11. A new section is added to chapter 75.28 RCW to read as follows:

TRANSFERS FROM ONE LICENSE HOLDER TO ANOTHER. (1) Unless otherwise provided in this title, a license issued under this chapter is not transferable from the license holder to any other person.

(2) The following restrictions apply to transfers of commercial fishery licenses, salmon delivery licenses, and salmon charter licenses that are transferable between license holders:

(a) The license holder shall surrender the previously issued license to the department.

(b) The department shall complete no more than one transfer of the license in any seven-day period.

(c) The fee to transfer a license from one license holder to another is twenty-two dollars.

(d) If a license is transferred from a resident to a nonresident, the transferee shall pay the difference between the resident and nonresident license fees at the time of transfer.

(3) A commercial license that is transferable under this title survives the death of the holder. Though such licenses are not personal property, they shall be treated as analogous to personal property for purposes of inheritance and intestacy. Such licenses are subject to state laws governing wills, trusts, estates, intestate succession, and community property, except that such licenses are exempt from claims of creditors of the estate and tax liens. The surviving spouse, estate, or beneficiary of the estate may apply for a renewal of the license. There is no fee for transfer of a license from a license holder to the license holder's surviving spouse or estate, or to a beneficiary of the estate.

Sec. 12. RCW 75.28.110 and 1989 c 316 s 3 are each amended to read as follows:

(1) The following commercial salmon ~~((fishing))~~ fishery licenses are required for the ~~((licensee))~~ license holder to use the specified gear to fish for salmon ~~((and other food fish))~~ in state waters. ~~((Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065;))~~ Only a person who meets the qualifications of RCW 75.30.120 may hold a license listed in this subsection. The licenses and their annual ~~((license))~~ fees and surcharges under RCW 75.50.100 are:

((Gear)) Fishery License	Resident Fee	Nonresident Fee	Surcharge
(a) <u>Salmon Gill Net—Grays Harbor-Columbia river</u>	<u>\$304</u>	<u>\$609</u>	<u>plus \$100</u>
(b) <u>Salmon Gill Net—Puget Sound</u>	<u>\$304</u>	<u>\$609</u>	<u>plus \$100</u>
(c) <u>Salmon Gill Net—Willapa Bay-Columbia river</u>	<u>\$304</u>	<u>\$609</u>	<u>plus \$100</u>
(d) <u>Salmon purse seine</u>	(((\$410)) <u>\$454</u>	(((\$820)) <u>\$908</u>	<u>plus \$100</u>
((b)) <u>Gill net</u>	<u>\$275</u>	<u>\$550</u>	
((e)) <u>Troll</u>	<u>\$275</u>	<u>\$550</u>	
((d)) (e) <u>Salmon reef net</u>	(((\$275)) <u>\$304</u>	(((\$550)) <u>\$609</u>	<u>plus \$100</u>
(f) <u>Salmon troll</u>	<u>\$304</u>	<u>\$609</u>	<u>plus \$100</u>

(2) A license issued under this section authorizes no taking or delivery of salmon or other food fish unless a vessel is designated on the license under section 7 of this act.

(3) Holders of commercial salmon ~~((fishing))~~ fishery licenses may retain incidentally caught food fish other than salmon, subject to rules of the director.

~~((3))~~ (4) A salmon troll license ~~((allows fishing in all licensing districts and))~~ includes a salmon delivery license.

~~((4))~~ (5) A ~~((separate))~~ salmon gill net license ~~((is required to fish for salmon in each of the licensing districts established in RCW 75.28.012))~~ authorizes the taking of salmon only in the geographical area for which the license is issued. The geographical designations in subsection (1) of this section have the following meanings:

(a) "Puget Sound" includes waters of the Strait of Juan de Fuca, Georgia Strait, Puget Sound and all bays, inlets, canals, coves, sounds, and estuaries lying easterly and southerly of the international boundary line and a line at the entrance to the Strait of Juan de Fuca projected northerly from Cape Flattery to the lighthouse on Tatoosh Island and then to Bonilla Point on Vancouver Island.

(b) "Grays Harbor-Columbia river" includes waters of Grays Harbor and tributary estuaries lying easterly of a line projected northerly from Point Chehalis Light to Point Brown and those waters of the Columbia river and tributary sloughs and estuaries easterly of a line at the entrance to the Columbia river projected southerly from the most westerly point of the North jetty to the most westerly point of the South jetty.

(c) "Willapa Bay-Columbia river" includes waters of Willapa Bay and tributary estuaries and easterly of a line projected northerly from Leadbetter Point to the Cape Shoalwater tower and those waters of the Columbia river and tributary sloughs described in (b) of this subsection.

Sec. 13. RCW 75.28.113 and 1989 c 316 s 4 are each amended to read as follows:

(1) ~~((A person operating a commercial fishing vessel used in taking))~~ It is unlawful to deliver with a commercial fishing vessel salmon taken in offshore waters ~~((and delivering the salmon))~~ to a place or port in the state ~~((shall obtain))~~ without a salmon delivery license from the director. ~~((Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065,))~~ The annual fee for a salmon delivery license is ~~((two hundred seventy-five))~~ three hundred four dollars for residents and ~~((five hundred fifty))~~ six hundred nine dollars for nonresidents. ~~((Persons operating fishing vessels licensed))~~ The annual surcharge under RCW 75.50.100 is one hundred dollars for each license. Holders of nonsalmon delivery licenses issued under RCW 75.28.125 may apply the nonsalmon delivery license fee ~~((of fifty dollars))~~ against the salmon delivery license fee.

(2) Only a person who meets the qualifications established in RCW 75.30.120 may hold a salmon delivery license issued under this section.

(3) A salmon delivery license authorizes no taking of salmon or other food fish or shellfish from the waters of the state.

(4) If the director determines that the operation of a vessel under a salmon delivery license results in the depletion or destruction of the state's salmon resource or the delivery into this state of salmon products prohibited by law, the director may revoke the license under the procedures of chapter 34.05 RCW.

Sec. 14. RCW 75.28.116 and 1989 c 316 s 5 are each amended to read as follows:

~~((The owner of a commercial salmon fishing vessel which is))~~ A person who does not ~~((qualified))~~ qualify for a license under RCW 75.30.120 ~~((is required to))~~ shall obtain a nontransferable emergency salmon ~~((single))~~ delivery license ~~((in order))~~ to make one ~~((landing))~~ delivery of salmon taken in offshore waters. The director shall not issue ~~((a))~~ an emergency salmon ~~((single))~~ delivery license unless, as determined by the director, a bona fide emergency exists. ~~((Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065,))~~ The license fee is one hundred ~~((thirty-five))~~ forty-nine dollars for residents and two hundred ~~((seventy))~~ ninety-nine dollars for nonresidents. An applicant for an emergency salmon delivery license shall designate no more than one vessel that will be used with the license. Alternate operator licenses are not required of persons delivering salmon under an emergency salmon delivery license. Emergency salmon delivery licenses are not renewable.

Sec. 15. RCW 75.28.120 and 1989 c 316 s 6 are each amended to read as follows:

~~((The following commercial fishing licenses are required for the licensee to use the specified gear to fish for food fish other than salmon in state waters. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fees are:~~

Gear	Resident	Nonresident
	Fee	Fee
(1) Jig	\$50	\$100
(2) Set line	\$50	\$100
(3) Set net	\$50	\$100
(4) Drag seine	\$50	\$100
(5) Gill net	\$275	\$550
(6) Purse seine	\$410	\$820
(7) Troll	\$50	\$100
(8) Bottom fish pots	\$50	\$100
(9) Lampara	\$100	\$200
(10) Dip bag net	\$50	\$100
(11) Brush weir	\$100	\$200
(12) Other gear	\$100	\$200))

(1) This section establishes commercial fishery licenses required for food fish fisheries and the annual fees for those licenses. As used in this section, "food fish" does not include salmon. The director may issue a limited-entry commercial fishery license only to a person who meets the qualifications established in applicable governing sections of this title.

Fishery (Governing section(s))	Annual Fee		Vessel Required?	Limited Entry?
	Resident	Nonresident		
(a) Baitfish Lampara	\$ 111	\$ 221	Yes	No
(b) Baitfish purse seine	\$ 454	\$ 908	Yes	No
(c) Bottom fish jig	\$ 55	\$ 111	Yes	No
(d) Bottom fish pot	\$ 55	\$ 111	Yes	No
(e) Bottom fish troll	\$ 55	\$ 111	Yes	No
(f) Carp	\$ 55	\$ 111	No	No
(g) Columbia river smelt	\$ 304	\$ 609	No	No
(h) Dog fish set net	\$ 55	\$ 111	Yes	No
(i) Emerging commercial fishery (RCW 75.30.220 (section 18 of this act))	\$ 111	\$ 221	Determined by rule	Determined by rule
(j) Food fish drag seine	\$ 55	\$ 111	Yes	No
(k) Food fish set line	\$ 55	\$ 111	Yes	No
(l) Food fish trawl— Non-Puget Sound	\$ 166	\$ 332	Yes	No
(m) Food fish trawl— Puget Sound	\$ 111	\$ 221	Yes	No

(n)	<u>Herring dip bag net</u> (RCW 75.30.140)	<u>\$ 100</u>	<u>\$ 200</u>	<u>Yes</u>	<u>Yes</u>
(o)	<u>Herring drag seine</u> (RCW 75.30.140)	<u>\$ 100</u>	<u>\$ 200</u>	<u>Yes</u>	<u>Yes</u>
(p)	<u>Herring gill net</u> (RCW 75.30.140)	<u>\$ 100</u>	<u>\$ 200</u>	<u>Yes</u>	<u>Yes</u>
(q)	<u>Herring Lampara</u> (RCW 75.30.140)	<u>\$ 100</u>	<u>\$ 200</u>	<u>Yes</u>	<u>Yes</u>
(r)	<u>Herring purse seine</u> (RCW 75.30.140)	<u>\$ 100</u>	<u>\$ 200</u>	<u>Yes</u>	<u>Yes</u>
(s)	<u>Herring spawn-on-kelp</u> N/A (RCW 75.28.245 (as recodified by section 54 of this act))	N/A	N/A	<u>Yes</u>	<u>Yes</u>
(t)	<u>Smelt dip bag net</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>No</u>	<u>No</u>
(u)	<u>Smelt gill net</u>	<u>\$ 304</u>	<u>\$ 609</u>	<u>Yes</u>	<u>No</u>
(v)	<u>Whiting—Puget Sound</u> (RCW 75.30.170)	<u>\$ 221</u>	<u>\$ 443</u>	<u>Yes</u>	<u>Yes</u>

(2) The director may by rule determine the species of food fish that may be taken with the commercial fishery licenses established in this section, the gear that may be used with the licenses, and the areas or waters in which the licenses may be used. Where a fishery license has been established for a particular species, gear, geographical area, or combination thereof, a more general fishery license may not be used to take food fish in that fishery.

Sec. 16. RCW 75.28.125 and 1989 c 316 s 7 are each amended to read as follows:

~~((A delivery license is required to deliver shellfish or food fish other than salmon taken in offshore waters to a port in the state. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065,)) (1) Except as provided in subsection (2) of this section, it is unlawful to deliver with a commercial fishing vessel food fish or shellfish taken in offshore waters to a port in the state without a nonsalmon delivery license. As used in this section, "food fish" does not include salmon. The annual license fee for a nonsalmon delivery license is ((fifty)) fifty-five dollars for residents and one hundred eleven dollars for nonresidents. ((Licenses issued under RCW 75.28.113 (salmon delivery license), RCW 75.28.130(4) (crab pot, other than Puget Sound), or RCW 75.28.140(2) (trawl, other than Puget Sound) shall include a delivery license.))~~

(2) Holders of salmon troll fishery licenses issued under RCW 75.28.110, salmon delivery licenses issued under RCW 75.28.113, crab pot—Non-Puget Sound fishery licenses issued under RCW 75.28.130, food fish trawl—Non-Puget Sound fishery licenses issued under RCW 75.28.120, and shrimp trawl—Non-Puget Sound fishery licenses issued under RCW 75.28.130 may deliver food fish or shellfish taken in offshore waters without a nonsalmon delivery license.

(3) A nonsalmon delivery license authorizes no taking of food fish or shellfish from state waters.

Sec. 17. RCW 75.28.130 and 1989 c 316 s 8 are each amended to read as follows:

~~((The following commercial fishing licenses are required for the licensee to use the specified gear to fish for shellfish in state waters. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fees are:~~

Gear	Resident	Nonresident
	Fee	Fee
(1) Ring net	\$50	\$100
(2) Shellfish pots (excluding crab)	\$50	\$100
(3) Crab pots (Puget Sound)	\$50	\$100
(4) Crab pots (other than Puget Sound)	\$200	\$400
(5) Shellfish diver (excluding clams)	\$50	\$100
(6) Squid gear, all types	\$100	\$200
(7) Ghost shrimp gear	\$100	\$200
(8) Commercial razor clam license	\$50	\$100
(9) Geoduck diver license	\$100	\$200
(10) Other shellfish gear	\$100	\$200

(1) This section establishes commercial fishery licenses required for shellfish fisheries and the annual fees for those licenses. The director may issue a limited-entry commercial fishery license only to a person who meets the qualifications established in applicable governing sections of this title.

Fishery (Governing section(s))	Annual Fee		Vessel Required?	Limited Entry?
	Resident	Nonresident		
<u>(a) Burrowing shrimp</u>	<u>\$ 111</u>	<u>\$ 221</u>	<u>Yes</u>	<u>No</u>
<u>(b) Crab pot— Non-Puget Sound</u>	<u>\$ 221</u>	<u>\$ 443</u>	<u>Yes</u>	<u>No</u>
<u>(c) Crab pot— Puget Sound</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>Yes</u>	<u>No</u>
<u>(d) Crab ring net— Non-Puget Sound</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>Yes</u>	<u>No</u>
<u>(e) Crab ring net— Puget Sound</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>Yes</u>	<u>No</u>

(f) <u>Dungeness crab— Puget Sound (RCW 75.30.130)</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>Yes</u>	<u>Yes</u>
(g) <u>Emerging commercial fishery (RCW 75.30.220 (section 18 of this act))</u>	<u>\$ 111</u>	<u>\$ 221</u>	<u>Determined by rule</u>	<u>Determined by rule</u>
(h) <u>Geoduck (Section 46 of this act)</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>Yes</u>	<u>Yes</u>
(i) <u>Hardshell clam mechanical harvester (RCW 75.28.280)</u>	<u>\$ 454</u>	<u>\$ 908</u>	<u>Yes</u>	<u>No</u>
(j) <u>Oyster reserve (RCW 75.28.290)</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>No</u>	<u>No</u>
(k) <u>Razor clam</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>No</u>	<u>No</u>
(l) <u>Sea cucumber dive (RCW 75.30.250)</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>Yes</u>	<u>Yes</u>
(m) <u>Sea urchin dive (RCW 75.30.210)</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>Yes</u>	<u>Yes</u>
(n) <u>Shellfish dive</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>Yes</u>	<u>No</u>
(o) <u>Shellfish pot</u>	<u>\$ 55</u>	<u>\$ 111</u>	<u>Yes</u>	<u>No</u>
(p) <u>Shrimp pot— Hood Canal</u>	<u>\$ 304</u>	<u>\$ 609</u>	<u>Yes</u>	<u>No</u>
(q) <u>Shrimp trawl— Non-Puget Sound</u>	<u>\$ 166</u>	<u>\$ 332</u>	<u>Yes</u>	<u>No</u>
(r) <u>Shrimp trawl— Puget Sound</u>	<u>\$ 111</u>	<u>\$ 221</u>	<u>Yes</u>	<u>No</u>
(s) <u>Squid</u>	<u>\$ 111</u>	<u>\$ 221</u>	<u>Yes</u>	<u>No</u>

(2) The director may by rule determine the species of shellfish that may be taken with the commercial fishery licenses established in this section, the gear that may be used with the licenses, and the areas or waters in which the licenses may be used. Where a fishery license has been established for a particular species, gear, geographical area, or combination thereof, a more general fishery license may not be used to take shellfish in that fishery.

NEW SECTION. Sec. 18. A new section is added to chapter 75.28 RCW to read as follows:

EMERGING COMMERCIAL FISHERY LICENSES AND PERMITS. (1) The director may by rule designate a fishery as an emerging commercial fishery. The director shall include in the designation whether the fishery is one that requires a vessel.

(2) "Emerging commercial fishery" means the commercial taking of a newly classified species of food fish or shellfish, the commercial taking of a classified species with gear not previously used for that species, or the commercial taking of a classified species in an area from which that species has not previously been

commercially taken. Any species of food fish or shellfish commercially harvested in Washington state as of June 7, 1990, may be designated as a species in an emerging commercial fishery, except that no fishery subject to a license limitation program in chapter 75.30 RCW may be designated as an emerging commercial fishery.

(3) It is unlawful to take food fish or shellfish in a fishery designated as an emerging commercial fishery without an emerging commercial fishery license and a permit from the director. The director shall issue two types of permits to accompany emerging commercial fishery licenses: Trial fishery permits and experimental fishery permits. Trial fishery permits are governed by subsection (4) of this section. Experimental fishery permits are governed by RCW 75.30.220.

(4) The director shall issue trial fishery permits for a fishery designated as an emerging commercial fishery unless the director determines there is a need to limit the number of participants under RCW 75.30.220. A person who meets the qualifications of RCW 75.28.020 may hold a trial fishery permit. The holder of a trial fishery permit shall comply with the terms of the permit. Trial fishery permits are not transferable from the permit holder to any other person.

Sec. 19. RCW 75.28.280 and 1989 c 316 s 12 are each amended to read as follows:

A hardshell clam mechanical harvester fishery license is required to operate a mechanical or hydraulic device for commercially harvesting clams, other than geoduck clams, ~~((on a clam farm))~~ unless the requirements of RCW 75.20.100 are fulfilled for the proposed activity. ~~((Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fee is four hundred ten dollars for residents and eight hundred twenty dollars for nonresidents.))~~

Sec. 20. RCW 75.28.290 and 1989 c 316 s 14 are each amended to read as follows:

A person who commercially takes shellfish from state oyster reserves under RCW 75.24.070 must have an oyster reserve fishery license ~~((is required for the commercial taking of shellfish from state oyster reserves. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fee is fifty dollars for residents and one hundred dollars for nonresidents)).~~

Sec. 21. RCW 75.28.095 and 1989 c 316 s 2, 1989 c 147 s 1, and 1989 c 47 s 2 are each reenacted and amended to read as follows:

(1) ~~((A charter boat license is required for a vessel to be operated as a charter boat from which food fish are taken for personal use. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065,))~~ The director shall issue the charter licenses and angler permits listed in this section according to the requirements of this title. The licenses and permits and their annual ((license)) fees and surcharges are:

<u>((Species))</u> <u>License or Permit</u>	<u>((Resident)) Annual</u> <u>Fee</u>		<u>((Nonresident</u> <u>Fee))</u> <u>Governing</u> <u>Section</u>
	<u>(RCW 75.50.100 Surcharge)</u>		
	<u>Resident</u>	<u>Nonresident</u>	
(a) ((Food fish other than salmon)) <u>Nonsalmon charter</u>	(((\$135)) <u>\$149</u>	(((\$270)) <u>\$299</u>	
(b) <u>Salmon ((and other food fish)) charter</u>	(((\$275)) <u>\$304</u> (plus \$100)	(((\$550)) <u>\$609</u> (plus \$100)	<u>RCW</u> <u>75.30.065</u>
(c) <u>Salmon angler</u> <u>75.30.070</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>RCW</u>
(d) <u>Salmon roe</u> <u>75.28.690</u>	<u>\$ 20</u>	<u>\$ 20</u>	<u>RCW</u>

(2) Except as provided in subsection (5) of this section, it is unlawful to operate a vessel as a charter boat from which salmon or salmon and other food fish are taken without a salmon charter license designating the vessel. The director may issue a salmon charter license only to a person who meets the qualifications of RCW 75.30.065.

(3) Except as provided in subsections (2) and (5) of this section, it is unlawful to operate a vessel as a charter boat from which food fish or shellfish are taken without a nonsalmon charter license. As used in this subsection, "food fish" does not include salmon.

(4) "Charter boat" means a vessel from which persons may, for a fee, fish for food fish or shellfish for personal use, and ((which delivers)) that brings food fish or shellfish into state ports or ((delivers)) brings food fish or shellfish taken from state waters into United States ports. The director may specify by rule when a vessel is a "charter boat" within this definition. "Charter boat" does not mean((:

~~(a) Vessels not generally engaged in charter boat fishing which are under private lease or charter and operated by the lessee for the lessee's personal recreational enjoyment; or~~

~~(b) Vessels)) a vessel used by ((guides)) a guide for clients fishing for food fish for personal use in freshwater rivers, streams, and lakes, other than Lake Washington or that part of the Columbia River below the bridge at Longview.~~

~~((3)) (5) A charter boat licensed in Oregon ((shall be permitted to)) may fish without a Washington charter ((boat)) license under the same rules as Washington charter boat operators in ocean waters within the jurisdiction of Washington state from the southern border of the state of Washington to Leadbetter Point ~~((under the same regulations as Washington charter boat operators)),~~ as long as the Oregon vessel does not land at any Washington port with the purpose of taking on or discharging passengers. The provisions of this~~

subsection shall be in effect as long as the state of Oregon has reciprocal laws and regulations.

~~((4) A vessel shall not engage in both charter or sports fishing and commercial fishing on the same day.))~~

Sec. 22. RCW 75.28.690 and 1989 c 316 s 18 are each amended to read as follows:

(1) A ~~((deckhand))~~ salmon roe license is required for a crew member on a ~~((licensed))~~ boat designated on a salmon charter ~~((boat))~~ license to sell salmon roe as provided in subsection (2) of this section. ~~((Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fee is twenty dollars.))~~ An individual under sixteen years of age may hold a salmon roe license.

(2) A ~~((deckhand))~~ crew member on a ~~((licensed))~~ boat designated on a salmon charter ~~((boat))~~ license may sell salmon roe taken from fish caught for personal use, subject to rules of the director and the following conditions:

(a) The salmon is taken ~~((while))~~ by an angler fishing on the charter boat;

(b) The roe is the property of the angler until the roe is given to the ~~((deckhand))~~ crew member. The crew member shall notify the charter boat's passengers ~~((are notified))~~ of this fact ~~((by the deckhand))~~;

(c) The crew member sells the roe ~~((is sold))~~ to a licensed wholesale dealer; and

(d) The ~~((deckhand))~~ crew member is licensed as provided in subsection (1) of this section and has the license in possession whenever the crew member sells salmon roe ~~((is sold))~~.

NEW SECTION. **Sec. 23.** A new section is added to chapter 75.28 RCW to read as follows:

PERSONAL LICENSES—FEES. The director shall issue the personal licenses listed in this section according to the requirements of this title. The licenses and their annual fees are:

Personal License	Annual Fee (RCW 75.50.100 Surcharge)		Governing Section
	Resident	Nonresident	
(1) Alternate Operator	\$ 50	\$ 100	Section 25 of this act
(2) Geoduck Diver	\$ 111	\$ 221	RCW 75.28.287 (as recodified by section 54 of this act)
(3) Salmon Guide	\$ 55 (plus \$20)	\$ 554 (plus \$100)	RCW 75.28.710

Sec. 24. RCW 75.28.287 and 1990 c 163 s 6 are each amended to read as follows:

Every diver engaged in the commercial harvest of geoduck ~~((or other))~~ clams shall obtain a nontransferable geoduck diver license.

NEW SECTION. Sec. 25. A new section is added to chapter 75.28 RCW to read as follows:

ALTERNATE OPERATOR LICENSE REQUIRED. (1) A person who holds a commercial fishery license, delivery license, or charter license may operate the vessel designated on the license. A person who is not the license holder may operate the vessel designated on the license only if:

- (a) The person holds an alternate operator license issued by the director; and
- (b) The person is designated as an alternate operator on the underlying commercial fishery license, delivery license, or charter license under section 9 of this act.

(2) Only an individual at least sixteen years of age may hold an alternate operator license.

(3) No individual may hold more than one alternate operator license. An individual who holds an alternate operator license may be designated as an alternate operator on an unlimited number of commercial fishery licenses, delivery licenses, and charter licenses under section 9 of this act.

(4) As used in this section, to "operate" means to control the deployment or removal of fishing gear from state waters while aboard a vessel, to operate a vessel as a charter boat, or to operate a vessel delivering food fish or shellfish taken in offshore waters to a port within the state.

Sec. 26. RCW 75.28.710 and 1991 c 362 s 2 are each amended to read as follows:

~~((A professional salmon guide license is required for the holder)) (1) It is unlawful to offer or perform the services of a professional salmon guide in the taking of salmon for personal use in freshwater rivers and streams, other than in that part of the Columbia river below the bridge at Longview, without a professional salmon guide license. ((The annual license fees are fifty dollars for residents and five hundred dollars for nonresidents. A surcharge of twenty dollars shall be assessed on each resident guide license and a surcharge of one hundred dollars shall be assessed on each nonresident guide license for the purposes of RCW 75.50.100.))~~

(2) Only an individual at least sixteen years of age may hold a professional salmon guide license. No individual may hold more than one professional salmon guide license.

Sec. 27. RCW 75.30.050 and 1990 c 61 s 3 are each amended to read as follows:

(1) The director shall appoint three-member advisory review boards to hear cases as provided in RCW 75.30.060. Members shall be from:

- (a) The salmon charter boat fishing industry in cases involving salmon charter ~~((boat))~~ licenses or angler permits;

(b) The commercial salmon fishing industry in cases involving commercial salmon fishery licenses;

(c) The commercial crab fishing industry in cases involving dungeness crab—Puget Sound ((crab)) fishery licenses ((endorsements));

(d) The commercial herring fishery in cases involving herring ((validations)) fishery licenses;

(e) The commercial Puget Sound whiting fishery in cases involving whiting—Puget Sound ((whiting)) fishery licenses ((endorsements));

(f) The commercial sea urchin fishery in cases involving sea urchin ((endorsements to shellfish diver)) dive fishery licenses; and

(g) The commercial sea cucumber fishery in cases involving sea cucumber ((endorsements to shellfish diver)) dive fishery licenses.

(2) Members shall serve at the discretion of the director and shall be reimbursed for travel expenses as provided in RCW 43.03.050 ((and)), 43.03.060, and 43.03.065.

Sec. 28. RCW 75.30.065 and 1983 1st ex.s. c 46 s 141 are each amended to read as follows:

((Salmon charter boat licenses issued under RCW 75.28.095(1)(b) may be issued only to boats which)) (1) After May 28, 1977, the director shall issue no new salmon charter licenses. A person may renew an existing salmon charter license only if the person held ((a salmon charter boat)) the license sought to be renewed during the previous year or ((had transferred to the boat such a)) acquired the license by transfer from someone who held it during the previous year, and if the person has not subsequently transferred the license to another ((boat)) person. ((A boat is entitled to only one salmon charter boat license.))

(2) Salmon charter ((boat)) licenses may be renewed each year. A salmon charter ((boat)) license which is not renewed each year shall not be renewed further.

((Salmon charter boat licenses are transferable.))

(3) Subject to the restrictions in section 11 of this act, salmon charter licenses are transferrable from one license holder to another.

Sec. 29. RCW 75.30.070 and 1989 c 147 s 2 are each amended to read as follows:

(1) ((In addition to a salmon charter boat license, an angler permit is required to operate a salmon)) Except as provided in subsection (3) of this section, it is unlawful to operate a vessel as a charter boat from which salmon are taken in salt water without an angler permit. The angler permit shall specify the maximum number of persons that may fish from the charter boat per trip ((and shall be issued annually without charge)). The angler permit expires if the salmon charter ((boat)) license is not renewed.

(2) Only a person who holds a salmon charter license issued under RCW 75.28.095 and 75.30.065 may hold an angler permit.

(3) An angler permit shall not be required for charter boats licensed in Oregon and fishing in ocean waters within the jurisdiction of Washington state from the southern border of the state of Washington to Leadbetter Point under the same regulations as Washington charter boat operators, as long as the Oregon vessel does not land at any Washington port with the purpose of taking on or discharging passengers. The provisions of this subsection shall be in effect as long as the state of Oregon has reciprocal laws and regulations.

Sec. 30. RCW 75.30.090 and 1983 1st ex.s. c 46 s 143 are each amended to read as follows:

A salmon charter boat may not carry more anglers than the number specified in the angler permit issued ~~((to the boat))~~ under RCW 75.30.070. Members of the crew may fish from the boat only to the extent that the number of anglers specified in the angler permit exceeds the number of noncrew passengers on the boat at that time.

Sec. 31. RCW 75.30.100 and 1983 1st ex.s. c 46 s 144 are each amended to read as follows:

(1) The total number of anglers authorized by the department shall not exceed the total number authorized for 1980.

(2) Angler permits issued under RCW 75.30.070 are transferable. All or a portion of the permit may be transferred to another salmon charter ~~((boat))~~ license holder.

(3) The angler permit holder and proposed transferee shall notify the department ~~((shall be notified))~~ when transferring an angler permit ~~((is transferred))~~, and the department shall issue a new angler permit certificate. If the original permit holder retains a portion of the permit, the department shall issue a new angler permit certificate reflecting the decrease in angler capacity.

(4) The department shall collect a fee of ten dollars for each certificate issued under ~~((this))~~ subsection (3) of this section.

Sec. 32. RCW 75.30.120 and 1983 1st ex.s. c 46 s 146 are each amended to read as follows:

(1) ~~((A commercial salmon fishing))~~ Except as provided in subsection (2) of this section, after May 6, 1974, the director shall issue no new commercial salmon fishery licenses or salmon delivery licenses. A person may renew an existing license ~~((issued under RCW 75.28.110 or salmon delivery permit issued under RCW 75.28.113 may be issued only to a vessel:~~

~~((a) Which))~~ only if the person held ~~((a state commercial salmon fishing))~~ the license ~~((or salmon delivery permit))~~ sought to be renewed during the previous year or ~~((had transferred to the vessel such a))~~ acquired the license by transfer from someone who held it during the previous year, and if the person has not subsequently transferred the license ~~((or permit))~~ to another ~~((vessel; and~~

~~((b) From which food fish were caught and landed in this state or in another state during the previous year as documented by a valid fish receiving document))~~ person.

(2) Where the ~~((failure))~~ person failed to obtain the license ~~((or permit))~~ during the previous year ~~((was the result))~~ because of a license ~~((or permit))~~ suspension, the ~~((vessel))~~ person may qualify for a license ~~((or permit))~~ by establishing that the ~~((vessel))~~ person held such a license ~~((or permit))~~ during the last year in which the license ~~((or permit))~~ was not suspended.

~~((2) The director may waive the landing requirement of subsection (1)(b) of this section if:~~

~~(a) The vessel to which an otherwise valid license is transferred has not had the opportunity to have caught and landed salmon; and~~

~~(b) The intent of the commercial salmon vessel limitation program established under this section is not violated.))~~

(3) Subject to the restrictions in section 11 of this act, commercial salmon ~~((fishing))~~ fishery licenses and salmon delivery ~~((permits))~~ licenses are transferable from one license holder to another.

Sec. 33. RCW 75.30.125 and 1986 c 198 s 2 are each amended to read as follows:

Any commercial salmon ~~((fishing))~~ fishery license issued under RCW 75.28.110 or salmon delivery ~~((permit))~~ license issued under RCW 75.28.113 shall revert to the department when any government confiscates and sells the vessel ~~((to which the license or permit was issued))~~ designated on the license. Upon application of the person named on the license ~~((or permit))~~ as license holder and the approval of the director, the department shall transfer the license ~~((or permit))~~ to the ~~((original owner))~~ applicant. Application for transfer of the license ~~((or permit))~~ must be made within the calendar year ~~((in which the vessel was licensed))~~ for which the license was issued.

Sec. 34. RCW 75.30.130 and 1983 1st ex.s. c 46 s 147 are each amended to read as follows:

(1) It is unlawful to take dungeness crab (*Cancer magister*) in ~~((the))~~ Puget Sound ~~((licensing district))~~ without first obtaining a dungeness crab—Puget Sound ~~((crab))~~ fishery license ~~((endorsement))~~. As used in this section, "Puget Sound" has the meaning given in RCW 75.28.110(5)(a). A dungeness crab—Puget Sound fishery license ~~((endorsement))~~ is not required to take other species of crab, including red rock crab (*Cancer productus*).

~~((2) ((Commercial crab licenses issued under RCW 75.28.130(3) endorsed for the Puget Sound licensing district may be issued only to vessels))~~ Except as provided in subsections (3) and (7) of this section, after January 1, 1982, the director shall issue no new dungeness crab—Puget Sound fishery licenses. Only a person who meets the following qualifications may renew an existing license:

~~((a) ((Which))~~ The person shall have held ~~((a commercial))~~ the dungeness crab—Puget Sound fishery license ~~((endorsed for the Puget Sound licensing district))~~ sought to be renewed during the previous year or ~~((had transferred to the vessel such a))~~ acquired the license by transfer from someone who held it

during the previous year, and ~~((has))~~ shall not have subsequently transferred the ~~((endorsed))~~ license to another ~~((vessel))~~ person; and

(b) ~~((From which))~~ The person shall document, by valid shellfish receiving tickets issued by the department, that one thousand pounds of dungeness crab were caught and ~~((landed in this state))~~ sold during the previous two-year period ending on December 31st of an odd-numbered year~~((, as documented by a valid shellfish receiving ticket. This requirement shall apply to licenses for which application is made after January 1, 1984))~~:

(i) Under the license sought to be renewed; or

(ii) Under any combination of the following commercial fishery licenses that the person held when the crab were caught and sold: Crab pot—Non-Puget Sound, crab ring net—Non-Puget Sound, dungeness crab—Puget Sound. Sales under a license other than the one sought to be renewed may be used for the renewal of no more than one dungeness crab—Puget Sound fishery license.

(3) Where the ~~((failure))~~ person failed to obtain the license during the previous year ~~((was the result))~~ because of a license suspension, the ~~((vessel))~~ person may qualify for a license by establishing that the ~~((vessel))~~ person held such a license during the last year in which the license was not suspended.

~~((3))~~ (4) The director may reduce or waive the ~~((landing))~~ poundage requirement established under subsection (2)(b) of this section upon the recommendation of a review board established under RCW 75.30.050. The review board may recommend a reduction or waiver of the ~~((landing))~~ poundage requirement in individual cases if, in the board's judgment, extenuating circumstances prevent achievement of the ~~((landing))~~ poundage requirement. The director shall adopt rules governing the operation of the review boards and defining "extenuating circumstances."

~~((4))~~ (5) This section does not restrict the issuance of commercial crab licenses for areas other than ~~((the))~~ Puget Sound ~~((licensing district is not restricted by this section))~~ or for species other than dungeness crab.

~~((5) License endorsements issued under this section are not)~~ (6) Subject to the restrictions in section 11 of this act, dungeness crab—Puget Sound fishery licenses are transferable from one ~~((owner))~~ license holder to another ~~((owner, except from parent to child or upon the death of the owner, before July 1, 1986. This restriction applies to all changes in the vessel owner named on the license, including (a) changes during the license year, and (b) changes during the license renewal process between years. This restriction does not prevent changes in vessel operator or transfers between vessels when the vessel owner remains unchanged. Upon request of a vessel owner, the director may issue a temporary permit to allow the vessel owner to use the license endorsement on a leased or rented vessel))~~.

~~((6))~~ (7) If ~~((less))~~ fewer than two hundred ~~((vessels))~~ persons are eligible for dungeness crab—Puget Sound fishery licenses ~~((endorsements))~~, the director may accept applications for new ~~((endorsements))~~ licenses. The director shall determine by random selection the successful applicants for the additional

~~((endorsements))~~ licenses. The number of additional ~~((endorsements))~~ licenses issued shall be sufficient to maintain two hundred ~~((vessels))~~ licenses in the Puget Sound dungeness crab fishery. The director shall adopt rules governing the application, selection, and issuance procedures for new dungeness crab—Puget Sound ~~((crab))~~ fishery licenses ~~((endorsements))~~, based upon recommendations of a board of review established under RCW 75.30.050.

Sec. 35. RCW 75.30.140 and 1983 1st ex.s. c 46 s 148 are each amended to read as follows:

(1) ~~((In addition to a commercial fishing license, a herring validation is required to))~~ It is unlawful to fish commercially for herring in state waters without a herring fishery license. ~~((Herring validations shall be issued without charge.))~~ As used in this section, "herring fishery license" means any of the following commercial fishery licenses issued under RCW 75.28.120: Herring dip bag net; herring drag seine; herring gill net; herring lampara; herring purse seine.

(2) Except as provided in this section, ~~((permanent))~~ a herring ~~((validations))~~ fishery license may be issued only to a person who:

(a) Established initial eligibility for a ~~((permanent))~~ herring ~~((validation))~~ fishery license as provided in subsection (3) of this section or ~~((had transferred to the person a permanent herring validation))~~ acquired such a license by transfer; (and)

(b) Held a herring fishery license during the previous year or acquired such a license by transfer; and

(c) Has not subsequently transferred the ((validation)) license to another person.

(3) A person may establish initial eligibility for a ~~((permanent))~~ herring ~~((validation))~~ fishery license by:

(a) Documenting to the department that the person landed herring during the period January 1, 1971, through April 15, 1973;

(b) Documenting to the department that the person landed herring during the period January 1, 1969, through December 31, 1970, if the person was in the armed forces of the United States during the period January 1, 1971, through April 15, 1973; or

(c) Applying to the department and qualifying for a ~~((permanent))~~ herring ~~((validation))~~ fishery license under hardship criteria established by rule of the director.

Landings may be documented only by a department fish receiving ticket.

(4) A ~~((permanent))~~ herring ~~((validation))~~ fishery license may be ~~((used))~~ issued only ((with)) for the type of fishing gear ((originally)) used to establish initial eligibility for the ((validation)) license.

(5) The director may establish rules governing the administration of this section based upon recommendations of a board of review established under RCW 75.30.050.

(6) ~~((Additional permanent and temporary validations may be granted by the department))~~ Except as provided in subsection (8) of this section, after January

1, 1995, the director shall issue no new herring fishery licenses. After January 1, 1995, a person may renew an existing license only if the person held the license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and if the person has not subsequently transferred the license to another person.

(7) Herring fishery licenses may be renewed each year. A herring fishery license that is not renewed each year shall not be renewed further.

(8) The department may issue additional herring fishery licenses if the stocks of herring will not be jeopardized by granting additional ~~((validations))~~ licenses. ~~((Herring validations are transferable.))~~

(9) Subject to the restrictions of section 11 of this act, herring fishery licenses are transferable from one license holder to another.

Sec. 36. RCW 75.28.235 and 1989 c 176 s 1 are each amended to read as follows:

The legislature finds that the wise management of Washington state's herring resource is of paramount importance to the people of the state. The legislature finds that herring are an important part of the food chain for a number of the state's living marine resources. The legislature finds that both open and closed pond "spawn on kelp" harvesting techniques allow for an economic return to the state while at the same time providing for the proper management of the herring resource. The legislature finds that limitations on the number of herring harvesters tends to improve the management and economic health of the herring industry. The maximum number of herring spawn on kelp ~~((permits))~~ fishery licenses shall not exceed five annually. The state therefore must use its authority to regulate the number of herring spawn on kelp ~~((permits))~~ fishery licenses so that the management and economic health of the herring fishery may be improved.

Sec. 37. RCW 75.28.245 and 1989 c 176 s 2 are each amended to read as follows:

~~((In addition to a commercial fishing license, a herring validation, and other applicable permits required under state law.))~~ (1) A herring spawn on kelp ~~((permit))~~ fishery license is required to commercially take herring eggs which have been deposited on vegetation of any type. ~~((All herring spawn on kelp permits shall be sold at auction to))~~

(2) A herring spawn on kelp fishery license may be issued only to a person who:

(a) Holds a herring fishery license issued under RCW 75.28.120 and 75.30.140; and

(b) Is the highest bidder in an auction conducted under subsection (3) of this section.

(3) The department shall sell herring spawn on kelp commercial fishery licenses at auction to the highest bidder. Bidders ~~((are required to))~~ shall identify their sources of kelp. Kelp harvested from state-owned aquatic lands as defined

in RCW 79.90.465 requires the written consent of the department of natural resources. The department shall give all holders of herring (~~(validation holders)~~) fishery licenses thirty days' notice of the auction.

Sec. 38. RCW 75.30.160 and 1986 c 198 s 6 are each amended to read as follows:

~~((In addition to any other license, a Puget Sound commercial whiting endorsement is required to take whiting in the waters of marine fish shell fish management and catch reporting areas 24B, Port Susan; 24C, Saratoga Passage; 26A, Possession Sound; or any other area designated by the department. An annual endorsement fee is two hundred dollars for residents and four hundred dollars for nonresidents. The license shall be affixed to the licensed vessel.))~~ It is unlawful to take whiting from areas that the department designates within the waters described in RCW 75.28.110(5)(a) without a whiting—Puget Sound fishery license.

Sec. 39. RCW 75.30.170 and 1986 c 198 s 5 are each amended to read as follows:

~~((To obtain a Puget Sound commercial whiting endorsement, the owner of the vessel must have))~~ (1) A whiting—Puget Sound fishery license may be issued only to an individual who:

(a) Delivered at least fifty thousand pounds of whiting during the period from January 1, 1981, through February 22, 1985, as verified by fish delivery tickets (~~(and must have))~~;

(b) Possessed, on January 1, 1986, all equipment necessary to fish for whiting; and

(c) Held a whiting—Puget Sound fishery license during the previous year or acquired such a license by transfer from someone who held it during the previous year.

(2) After January 1, 1995, the director shall issue no new whiting—Puget Sound fishery licenses. After January 1, 1995, only an individual who meets the following qualifications may renew an existing license: The individual shall have held the license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and shall not have subsequently transferred the license to another person.

(3) Whiting—Puget Sound fishery licenses may be renewed each year. A whiting—Puget Sound fishery license that is not renewed each year shall not be renewed further.

Sec. 40. RCW 75.30.180 and 1986 c 198 s 4 are each amended to read as follows:

~~((Commercial Puget Sound whiting license endorsements issued under RCW 75.30.160 shall be valid for the owner and the vessel for which the endorsement was issued. The endorsement))~~ A whiting—Puget Sound fishery license may be transferred through gift, devise, bequest, or descent to members of the license holder's immediate family which shall be limited to spouse, children, or

stepchildren. ~~((Only a natural person may possess an endorsement. The owner of the endorsement must))~~ The holder of a whiting—Puget Sound fishery license shall be present on any vessel taking whiting under ((terms of)) the ((endorsement)) license. In no instance may temporary permits be issued.

The director may adopt rules necessary to implement RCW ~~((75.30.150))~~ 75.30.160 through 75.30.180.

Sec. 41. RCW 75.30.210 and 1990 c 62 s 2 are each amended to read as follows:

(1) ~~((After October 1, 1990,))~~ It is unlawful to commercially take any species of sea urchin using shellfish diver gear without first obtaining a sea urchin ((endorsement to accompany a shellfish diver)) dive fishery license. ((A sea urchin endorsement to a shellfish diver license issued under RCW 75.28.130(5)) shall be limited to those vessels which:

- ~~(a) Held a commercial shellfish diver license, excluding clams, during calendar years 1988 and 1989 or had transferred to the vessel such a license;~~
- ~~(b) Have not transferred the license to another vessel; and~~
- ~~(c) Can establish, by means of dated shellfish receiving documents issued by the department, that twenty thousand pounds of sea urchins were caught and landed under the license during the period of April 1, 1986, through March 31, 1988.~~

~~Endorsements issued under this section are a new licensing condition, and the continuing license provisions of RCW 34.05.422(3) are not applicable.)~~

(2) ~~((In addition to the requirements of subsection (1) of this section, after December 31, 1991, sea urchin endorsements to shellfish diver licenses issued under RCW 75.28.130(5) may be issued only to vessels))~~ Except as provided in subsections (3) and (6) of this section, after December 31, 1991, the director shall issue no new sea urchin dive fishery licenses. Only a person who meets the following qualifications may renew an existing license:

- ~~(a) ((Which))~~ The person shall have held ((a)) the sea urchin ((endorsement to a shellfish diver)) dive fishery license sought to be renewed during the previous year or ~~((had transferred to the vessel such a))~~ acquired the license by transfer from someone who held it during the previous year; and
- ~~(b) ((From which))~~ The person shall document, by valid shellfish receiving tickets issued by the department, that twenty thousand pounds of sea urchins were caught and ~~((landed in this state))~~ sold under the license sought to be renewed during the two-year period ending March 31 of ~~((a))~~ the most recent odd-numbered year~~((, as documented by valid shellfish receiving documents issued by the department)).~~

(3) ~~((failure))~~ Where the person failed to obtain the license during the previous year ~~((was the result))~~ because of a license suspension or revocation by the department or the court, the ~~((vessel))~~ person may qualify for a license by establishing that the ~~((vessel))~~ person held such a license during the last year in which ~~((t))~~ the person was eligible.

~~((2))~~ (4) The director may reduce or waive ~~((any landing))~~ the poundage requirement ~~((established under))~~ of subsection (2)(b) of this section upon the recommendation of a board of review established under RCW 75.30.050. The board of review may recommend a reduction or waiver of the ~~((landing))~~ poundage requirement in individual cases if, in the board's judgment, extenuating circumstances prevent achievement of the ~~((landing))~~ poundage requirement. The director shall adopt rules governing the operation of the board of review and defining "extenuating circumstances."

~~((4))~~ (5) Sea urchin ~~((endorsements issued under this section))~~ dive fishery licenses are not transferable from one ~~((owner))~~ license holder to another ~~((owner))~~, except from parent to child, or from spouse to spouse during marriage or as a result of marriage dissolution, or upon the death of the ~~((owner))~~ license holder. ~~((This restriction applies to all changes in the vessel owner's name on the license, including (a) changes during the license year, and (b) changes during the license renewal process between years. This restriction does not prevent changes in vessel operator or transfers between vessels when the vessel owner remains unchanged. Upon request of a vessel owner, the director may issue a temporary permit to allow the vessel owner to use the license endorsement on a leased or rented vessel.~~

~~((5))~~ (6) If ~~((less))~~ fewer than forty-five ~~((vessels))~~ persons are eligible for sea urchin ~~((endorsements))~~ dive fishery licenses, the director may accept applications for new ~~((endorsements))~~ licenses. The director shall determine by random selection the successful applicants for the additional ~~((endorsements))~~ licenses. The number of additional ~~((endorsements))~~ licenses issued shall be sufficient to maintain up to forty-five ~~((vessels))~~ licenses in the sea urchin dive fishery. The director shall adopt rules governing the application, selection, and issuance procedure for new sea urchin ~~((endorsements))~~ dive fishery licenses, based upon recommendations of a board of review established under RCW 75.30.050.

Sec. 42. RCW 75.30.220 and 1990 c 63 s 2 are each amended to read as follows:

~~((1))~~ ~~((The director may by rule designate a fishery as an emerging commercial fishery.~~

~~((2))~~ The director may issue experimental fishery permits for commercial harvest in an emerging commercial fishery for which the director has determined there is a need to limit the number of participants. The director shall determine by rule the number and qualifications of participants for such experimental fishery permits. Only a person who holds an emerging commercial fishery license issued under section 18 of this act and who meets the qualifications established in those rules may hold an experimental fishery permit. The director shall limit the number of these permits to prevent habitat damage, ensure conservation of the resource, and prevent overharvesting. In developing rules for limiting participation in an emerging or expanding commercial fishery, the director shall appoint a five-person advisory board representative of the affected

fishery industry. The advisory board shall review and make recommendations to the director on rules relating to the number and qualifications of the participants for such ~~((supplemental))~~ experimental fishery permits.

~~((3))~~ (2) RCW 34.05.422(3) does not apply to applications for new experimental fishery permits.

~~((4) Upon request of a vessel owner, the director may allow the vessel owner to temporarily transfer the experimental fishery permit to a leased or rented vessel. The director shall allow such temporary transfers only when the vessel holding the experimental fishery permit is disabled.)~~

(3) Experimental fishery permits are not transferable from the permit holder to any other person.

Sec. 43. RCW 75.30.240 and 1990 c 63 s 4 are each amended to read as follows:

Within five years after adopting rules to govern the number and qualifications of participants in an emerging commercial fishery, the director shall provide to the appropriate senate and house of representatives committees a report which outlines the status of the fishery and a recommendation as to whether a separate commercial fishery license, license fee, or ~~((endorsement and/or a))~~ limited harvest program should be established for that fishery.

Sec. 44. RCW 75.30.250 and 1990 c 61 s 2 are each amended to read as follows:

~~(1) ((After April 30, 1990,))~~ It is unlawful to commercially take while using shellfish diver gear any species of sea cucumber without first obtaining a sea cucumber ((endorsement to accompany a shellfish diver)) dive fishery license.

~~((A))~~ (2) Except as provided in subsection (6) of this section, after December 31, 1991, the director shall issue no new sea cucumber ((endorsement to a shellfish diver)) dive fishery licenses ((issued under RCW 75.28.130(5) shall be limited to those vessels which)). Only a person who meets the following qualifications may renew an existing license:

~~(a) ((Held a commercial shellfish diver license (excluding elams), between January 1, 1989, and December 31, 1989, or had transferred to the vessel such a license, and held a permit for harvest of sea cucumbers in 1989;~~

~~(b) Have not transferred the license to another vessel;~~

~~(c) Can establish, by means of dated shellfish receiving documents issued by the department, that thirty landings of sea cucumbers were made under the license during the period of January 1, 1988, through December 31, 1989; and~~

~~(d) Endorsements issued under this section are a new licensing condition, and the continuing license provisions of RCW 34.05.422(3) are not applicable.~~

~~(2) In addition to the requirements of subsection (1) of this section, after December 31, 1991, sea cucumber endorsements to shellfish diver licenses issued under RCW 75.28.130(5) may be issued only to vessels which:~~

~~(a)) The person shall have held ((a)) the sea cucumber ((endorsement to a shellfish diver)) dive fishery license sought to be renewed during the previous~~

two years or ~~((had transferred to the vessel such a))~~ acquired the license by transfer from someone who held it during the previous year; and

(b) ~~((Can))~~ The person shall establish, by means of dated shellfish receiving documents issued by the department, that thirty landings of sea cucumbers totaling at least ten thousand pounds were made under the license during the previous two-year period ending December 31 of the odd-numbered year.

~~(3)~~ Where ~~((failure))~~ the person failed to obtain the license during either of the previous two years ~~((was the result))~~ because of a license suspension by the department or the court, the ~~((vessel))~~ person may qualify for a license by establishing that the ~~((vessel))~~ person held such a license ~~((and a sea cucumber endorsement))~~ during the last year in which ~~((it))~~ the person was eligible.

~~((3))~~ (4) The director may reduce or waive any landing or poundage requirement established under this section upon the recommendation of a board of review established under RCW 75.30.050. The board of review may recommend a reduction or waiver of any landing or poundage requirement in individual cases if, in the board's judgment, extenuating circumstances prevent achievement of the landing or poundage requirement. The director shall adopt rules governing the operation of the board of review and defining "extenuating circumstances."

~~((4))~~ (5) Sea cucumber ~~((endorsements issued under this section))~~ dive fishery licenses are not ~~((transferrable))~~ transferable from one ~~((owner))~~ license holder to another ~~((owner))~~ except from parent to child, from spouse to spouse during marriage or as a result of marriage dissolution, or upon death of the ~~((owner))~~ license holder. ~~((This restriction does not prevent changes in vessel operator or transfers between vessels when the vessel owner remains unchanged.~~

~~((5))~~ (6) If ~~((less))~~ fewer than fifty ~~((vessels))~~ persons are eligible for sea cucumber ~~((endorsements))~~ dive fishery licenses, the director may accept applications for new ~~((endorsements))~~ licenses from those persons who can demonstrate two years' experience in the Washington state sea cucumber ~~((diver))~~ dive fishery. The director shall determine by random selection the successful applicants for the additional ~~((endorsements))~~ licenses. The number of additional ~~((endorsements))~~ licenses issued shall be sufficient to maintain up to fifty ~~((vessels))~~ licenses in the sea cucumber dive fishery. The director shall adopt rules governing the application, selection, and issuance procedure for new sea cucumber ~~((endorsements))~~ dive fishery licenses, based upon recommendations of a board of review established under RCW 75.30.050.

NEW SECTION. Sec. 45. A new section is added to chapter 75.30 RCW to read as follows:

VESSEL-TO-PERSON TRANSITION. (1) A person who on January 1, 1994, owns a vessel that on December 31, 1993, qualifies for a salmon charter boat license under section 141, chapter 46, Laws of 1983 1st ex. sess. shall be deemed to qualify for a 1994 salmon charter license under section 28(1) of this act.

(2) A person who on January 1, 1994, owns a vessel that on December 31, 1993, qualifies for a 1994 commercial salmon fishing license or salmon delivery permit under section 146, chapter 46, Laws of 1983 1st ex. sess. shall be deemed to qualify for a 1994 commercial salmon fishery license or salmon delivery license under section 32(1) of this act.

(3) A person who on January 1, 1994, owns a vessel that on December 31, 1993, qualifies for a 1994 Puget Sound crab license endorsement under section 147, chapter 46, Laws of 1983 1st ex. sess. shall be deemed to qualify for a 1994 dungeness crab—Puget Sound fishery license under section 34(2) of this act.

(4) A person who on December 31, 1993, qualifies for a 1994 herring validation under section 148, chapter 46, Laws of 1983 1st ex. sess. shall be deemed to qualify for a 1994 herring fishery license under section 35(2) of this act.

(5) A person who on December 31, 1993, qualifies for a 1994 Puget Sound commercial whiting endorsement under section 5, chapter 198, Laws of 1986 shall be deemed to qualify for a 1994 whiting—Puget Sound fishery license under section 39(1) of this act.

(6) A person who on January 1, 1994, owns a vessel that on December 31, 1993, qualifies for a 1994 sea urchin endorsement to a shellfish diver license under section 2, chapter 62, Laws of 1990 shall be deemed to qualify for a 1994 sea urchin dive fishery license under section 41(2) of this act. Any sea urchin landings made from the vessel between April 1, 1993, and December 31, 1993, shall be deemed to be sales under section 41(2)(b) of this act.

(7) A person who on January 1, 1994, owns a vessel that on December 31, 1993, qualifies for a 1994 sea cucumber endorsement to a shellfish diver license under section 2, chapter 61, Laws of 1990 shall be deemed to qualify for a 1994 sea cucumber dive fishery license under section 44(2) of this act.

(8) This section shall expire January 1, 1995.

NEW SECTION. Sec. 46. A new section is added to chapter 75.30 RCW to read as follows:

GEODUCK FISHERY LICENSES. (1) It is unlawful to harvest geoduck clams commercially without a geoduck fishery license. This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020.

(2) Only a person who has entered into a geoduck harvesting agreement with the department of natural resources under RCW 79.96.080 may hold a geoduck fishery license.

(3) A geoduck fishery license authorizes no taking of geoducks outside the boundaries of the public lands designated in the underlying harvesting agreement, or beyond the harvest ceiling set in the underlying harvesting agreement.

(4) A geoduck fishery license expires when the underlying geoduck harvesting agreement terminates.

(5) The director shall determine the number of geoduck fishery licenses that may be issued for each geoduck harvesting agreement, the number of units of gear whose use the license authorizes, and the type of gear that may be used, subject to RCW 75.24.100. In making those determinations, the director shall seek to conserve the geoduck resource and prevent damage to its habitat.

(6) The holder of a geoduck fishery license and the holder's agents and representatives shall comply with all applicable commercial diving safety regulations adopted by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists on May 8, 1979, 84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq. A violation of those regulations is a violation of this subsection. For the purposes of this section, persons who dive for geoducks are "employees" as defined by the federal occupational safety and health act. A violation of this subsection is grounds for suspension or revocation of a geoduck fishery license following a hearing under the procedures of chapter 34.05 RCW. The department shall not suspend or revoke a geoduck fishery license if the violation has been corrected within ten days of the date the license holder receives written notice of the violation. If there is a substantial probability that a violation of the commercial diving standards could result in death or serious physical harm to a person engaged in harvesting geoduck clams, the department shall suspend the license immediately until the violation has been corrected. If the license holder is not the operator of the harvest vessel and has contracted with another person for the harvesting of geoducks, the department shall not suspend or revoke the license if the license holder terminates its business relationship with that person until compliance with this subsection is secured.

Sec. 47. RCW 75.08.011 and 1990 c 63 s 6 and 1990 c 35 s 3 are each reenacted and amended to read as follows:

As used in this title or rules of the director, unless the context clearly requires otherwise:

- (1) "Director" means the director of fisheries.
- (2) "Department" means the department of fisheries.
- (3) "Person" means an individual or a public or private entity or organization. The term "person" includes local, state, and federal government agencies, and all business organizations, including corporations and partnerships.
- (4) "Fisheries patrol officer" means a person appointed and commissioned by the director, with authority to enforce this title, rules of the director, and other statutes as prescribed by the legislature. Fisheries patrol officers are peace officers.
- (5) "Ex officio fisheries patrol officer" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio fisheries patrol officer" also includes wildlife agents, special agents of the national marine fisheries service, United States fish and wildlife special agents, state parks commissioned officers, department of

natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.

(6) "To fish," "to harvest," and "to take" and their derivatives mean an effort to kill, injure, harass, or catch food fish or shellfish.

(7) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(8) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(9) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(10) "Resident" means a person who has for the preceding ninety days maintained a permanent abode within the state, has established by formal evidence an intent to continue residing within the state, and is not licensed to fish as a resident in another state.

(11) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(12) "Food fish" means those species of the classes Osteichthyes, Agnatha, and Chondrichthyes that shall not be fished for except as authorized by rule of the director. The term "food fish" includes all stages of development and the bodily parts of food fish species.

(13) "Shellfish" means those species of marine and freshwater invertebrates that shall not be taken except as authorized by rule of the director. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(14) "Salmon" means all species of the genus *Oncorhynchus*, except those classified as game fish in Title 77 RCW, and includes:

Scientific Name	Common Name
<i>Oncorhynchus tshawytscha</i>	Chinook salmon
<i>Oncorhynchus kisutch</i>	Coho salmon
<i>Oncorhynchus keta</i>	Chum salmon
<i>Oncorhynchus gorbuscha</i>	Pink salmon
<i>Oncorhynchus nerka</i>	Sockeye salmon

(15) "Commercial" means related to or connected with buying, selling, or bartering. Fishing for food fish or shellfish with gear unlawful for fishing for personal use, or possessing food fish or shellfish in excess of the limits permitted for personal use are commercial activities.

(16) "To process" and its derivatives mean preparing or preserving food fish or shellfish.

(17) "Personal use" means for the private use of the individual taking the food fish or shellfish and not for sale or barter.

(18) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or

reel to which are attached no more than two single hooks or one artificial bait with no more than four multiple hooks.

(19) "Open season" means those times, manners of taking, and places or waters established by rule of the director for the lawful fishing, taking, or possession of food fish or shellfish. "Open season" includes the first and last days of the established time.

(20) (~~"Emerging commercial fishery" means any commercial fishery:~~

~~(a) For food fish or shellfish so designated by rule of the director, except that no species harvested under a license limitation program contained in chapter 75.30 RCW may be designated as a species in an emerging commercial fishery.~~

~~(b) Which will include, subject to the limitation in (a) of this subsection, all species harvested for commercial purposes as of June 7, 1990, and the future commercial harvest of all other species in the waters of the state of Washington.~~

~~(21) "Experimental fishery permit" means a permit issued by the director to allow the recipient to engage in an emerging commercial)) "Fishery" means the taking of one or more particular species of food fish or shellfish with particular gear in a particular geographical area.~~

(21) "Limited-entry license" means a license subject to a license limitation program established in chapter 75.30 RCW.

Sec. 48. RCW 75.08.230 and 1989 c 176 s 4 are each amended to read as follows:

(1) Except as provided in this section, state and county officers receiving the following moneys shall deposit them in the state general fund:

(a) The sale of licenses required under this title;

(b) The sale of property seized or confiscated under this title;

(c) Fines and forfeitures collected under this title;

(d) The sale of real or personal property held for department purposes;

(e) Rentals or concessions of the department;

(f) Moneys received for damages to food fish, shellfish or department property; and

(g) Gifts.

(2) The director shall make weekly remittances to the state treasurer of moneys collected by the department.

(3) All fines and forfeitures collected or assessed by a district court for a violation of this title or rule of the director shall be remitted as provided in chapter 3.62 RCW.

(4) Proceeds from the sale of food fish or shellfish taken in test fishing conducted by the department, to the extent that these proceeds exceed the estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270 to reimburse the department for unanticipated costs for test fishing operations in excess of the allowance in the budget approved by the legislature.

(5) Proceeds from the sale of salmon and salmon eggs by the department, to the extent these proceeds exceed estimates in the budget approved by the

legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for hatchery operations partially or wholly financed by sources other than state general revenues or for purposes of processing human consumable salmon for disposal.

(6) Moneys received by the director under RCW 75.08.045, to the extent these moneys exceed estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for the specific purpose for which the moneys were received, unless the moneys were received in settlement of a claim for damages to food fish or shellfish, in which case the moneys may be expended for the conservation of these resources.

(7) Proceeds from the sale of herring spawn on kelp ~~((permits))~~ fishery licenses by the department, to the extent those proceeds exceed estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for herring management, enhancement, and enforcement.

NEW SECTION. **Sec. 49.** A new section is added to chapter 75.12 RCW to read as follows:

It is unlawful to use a vessel in both charter or recreational fishing and commercial fishing on the same day.

Sec. 50. RCW 75.28.134 and 1989 c 316 s 9 are each amended to read as follows:

~~((1) In addition to a shellfish pot license, a Hood Canal shrimp endorsement is required to take shrimp commercially in that portion of Hood Canal lying south of the Hood Canal floating bridge. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual endorsement fee is two hundred twenty five dollars for a resident and four hundred fifty dollars for a nonresident.~~

~~(2) Not~~) It is unlawful to use more than fifty shrimp pots ~~((may be used))~~ while commercially fishing for shrimp in that portion of Hood Canal lying south of the Hood Canal floating bridge.

Sec. 51. RCW 75.24.100 and 1984 c 80 s 2 are each amended to read as follows:

~~(1) ((The director may issue licenses, with the approval of the commissioner of public lands, for the commercial harvesting of geoduck clams from specific tracts of beds of navigable waters for which harvest rights have been granted by the department of natural resources. The director shall not authorize commercial harvesting on))~~ It is unlawful to take geoduck clams for commercial purposes outside the harvest area designated in a current department of natural resources geoduck harvesting agreement issued under RCW 79.96.080. It is unlawful to commercially harvest geoduck clams from ~~bottoms~~ ~~((which))~~ that are shallower than eighteen feet below mean lower low water (0.0 ft.), or ~~((which))~~ that lie in an area bounded by the line of ordinary high tide (mean high tide) and a line two

hundred yards seaward from and parallel to the line of ordinary high tide. ~~((If the director determines that the number of units of gear is sufficient to harvest the known available crop and that additional units of gear might prove damaging to the resource or its habitat, the director may suspend the issuance of additional licenses until the director determines there is need for additional units of gear to achieve a sustained harvest.))~~ This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020.

(2) Commercial geoduck harvesting shall be done with a hand-held, manually operated water jet or suction device guided and controlled from under water by a diver. Periodically, the director shall determine the effect of each type or unit of gear upon the geoduck population or the substrate they inhabit. The director may require modification of the gear or stop its use if it is being operated in a wasteful or destructive manner or if its operation may cause permanent damage to the bottom or adjacent shellfish populations.

~~((3) A person, including the person's agents or representatives, who holds a license under subsection (1) of this section shall comply with all applicable commercial diving safety regulations adopted by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists on May 8, 1979 (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.). A violation of these regulations is a violation of this subsection. For the purposes of this section, persons who dive for geoducks are "employees" as defined by the federal occupational safety and health act. A violation of this subsection is grounds for suspension or revocation of the license following a hearing as provided for in chapter 34.05 RCW. A license shall not be suspended or revoked if the violation has been corrected within ten days of receipt of written notice of the violation. If there is a substantial probability that a violation of the commercial diving standards could result in death or serious physical harm to a person engaged in harvesting geoduck clams, the department shall suspend the license immediately until the violation has been corrected. If the licensee is the holder of a tract license and contracts with another person for the harvesting of geoducks, the license shall not be suspended or canceled if the licensee terminates its business relationship with such entity until compliance with this subsection is secured.))~~

Sec. 52. RCW 75.28.070 and 1983 1st ex.s. c 46 s 110 are each amended to read as follows:

~~((Clam or oyster farm, oyster reserve, and))~~ Wholesale fish dealer licenses shall be displayed at the business premises of the licensee.

Sec. 53. RCW 75.50.100 and 1990 c 58 s 3 are each amended to read as follows:

The dedicated regional fisheries enhancement group account is created in the custody of the state treasurer. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment

procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

A surcharge of one dollar shall be collected on each recreational salmon license sold in the state. A surcharge of one hundred dollars shall be collected on each commercial salmon ~~((fishing))~~ fishery license, each salmon delivery license, and each salmon charter ~~((boat "salmon and other food fish"))~~ license sold in the state. The department shall study methods for collecting and making available, an annual list, including names and addresses, of all persons who obtain recreational and commercial salmon fishing licenses. This list may be used to assist formation of the regional fisheries enhancement groups and allow the broadest participation of license holders in enhancement efforts. The results of the study shall be reported to the house of representatives fisheries and wildlife committee and the senate environment and natural resources committee by October 1, 1990. All receipts shall be placed in the regional fisheries enhancement group account and shall be used exclusively for regional fisheries enhancement group projects for the purposes of RCW 75.50.110. Funds from the regional fisheries enhancement group account shall not serve as replacement funding for department operated salmon projects that exist on January 1, 1991.

All revenue from the department's sale of salmon carcasses and eggs that return to group facilities shall be deposited in the regional fisheries enhancement group account for use by the regional fisheries enhancement group that produced the surplus. The ~~((department))~~ director shall adopt rules to implement this section pursuant to chapter 34.05 RCW.

NEW SECTION. Sec. 54. (1) RCW 75.28.070 as amended by section 52 of this act is recodified within chapter 75.28 RCW to follow RCW 75.28.300.

(2) RCW 75.28.134 as amended by section 50 of this act is recodified as a section in chapter 75.12 RCW.

(3) RCW 75.28.235 as amended by section 36 of this act is recodified as a section in chapter 75.30 RCW.

(4) RCW 75.28.245 as amended by section 37 of this act is recodified as a section in chapter 75.30 RCW.

(5) RCW 75.28.287 as amended by section 24 of this act is recodified within chapter 75.28 RCW to follow RCW 75.28.710.

NEW SECTION. Sec. 55. RCW 75.30.150 is decodified.

NEW SECTION. Sec. 56. The following acts or parts of acts are each repealed:

(1) RCW 75.28.012 and 1983 1st ex.s. c 46 s 102, 1971 ex.s. c 283 s 2, & 1957 c 171 s 1;

(2) RCW 75.28.035 and 1989 c 316 s 1, 1983 1st ex.s. c 46 s 107, 1959 c 309 s 9, & 1955 c 12 s 75.28.100;

(3) RCW 75.28.060 and 1983 1st ex.s. c 46 s 109, 1971 ex.s. c 283 s 4, 1965 ex.s. c 30 s 1, 1959 c 309 s 8, 1955 c 212 s 3, & 1955 c 12 s 75.28.060;

(4) RCW 75.28.140 and 1989 c 316 s 10, 1983 1st ex.s. c 46 s 121, 1977 ex.s. c 327 s 7, 1971 ex.s. c 283 s 8, 1965 ex.s. c 73 s 5, 1959 c 309 s 13, & 1955 c 12 s 75.28.140; and

(5) RCW 75.28.255 and 1989 c 316 s 11, 1983 1st ex.s. c 46 s 122, & 1955 c 212 s 5.

NEW SECTION. **Sec. 57.** Section headings as used in this act do not constitute any part of the law.

NEW SECTION. **Sec. 58.** This act shall take effect January 1, 1994.

NEW SECTION. **Sec. 59.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate April 19, 1993.

Passed the House April 5, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

CHAPTER 341

[Engrossed Substitute Senate Bill 5157]

STATUTORY ATTORNEYS' FEES INCREASED

Effective Date: 7/25/93

AN ACT Relating to attorneys' fees; and amending RCW 12.20.060.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 12.20.060 and 1985 c 240 s 2 are each amended to read as follows:

When the prevailing party in district court is entitled to recover costs as authorized in RCW 4.84.010 in a civil action, the judge shall add the amount thereof to the judgment; in case of failure of the plaintiff to recover or of dismissal of the action, the judge shall enter up a judgment in favor of the defendant for the amount of his or her costs; and in case any party so entitled to costs is represented in the action by an attorney, the judge shall include attorney's fees of ~~((fifty))~~ one hundred twenty-five dollars as part of the costs: PROVIDED, HOWEVER, That the plaintiff shall not be entitled to such attorney fee unless he or she obtains, exclusive of costs, a judgment in the sum of ~~((twenty-five))~~ fifty dollars or more.

Passed the Senate April 22, 1993.

Passed the House April 7, 1993.

Approved by the Governor May 15, 1993.

Filed in Office of Secretary of State May 15, 1993.

EXHIBIT 12

FINAL BILL REPORT

SB 6074

C 2 L 95 E1

Synopsis as Enacted

Brief Description: Expanding the authority of the fish and wildlife commission.

Sponsors: Senators Sutherland and Rasmussen.

Background: A state commission has been involved in the management of game fish and wildlife since 1933, when a voter initiative created the state Department of Game and the Game Commission. The new commission was charged with hiring the director of the department, establishing the direction and priorities of the agency, adopting hunting and fishing regulations, and other duties. Funding for the agency for the next few decades came primarily through the sale of various licenses, tags, and permits and from excise taxes on sporting goods.

By 1987, the agency was in a precarious fiscal situation. Legislation enacted in 1987 changed the name of the agency to the Department of Wildlife and provided an infusion of \$8 million to the agency from the state general fund. The legislation also changed the commission's name to the Wildlife Commission, and appointment authority for the agency's director shifted from the commission to the Governor.

In 1993, the Department of Fisheries and the Department of Wildlife merged into the current Department of Fish and Wildlife. The legislation merging the two agencies directed the commission (renamed the Fish and Wildlife Commission) to review its area of responsibility in the consolidated agency and to provide recommendations to the Legislature and the Governor on any necessary changes in its statutory authority.

The Fish and Wildlife Commission completed its review and submitted its recommendations in November 1994. The commission recommends that its authority be expanded to include the following:

- Regulatory authority for all species, including food fish and shellfish;
- Regulatory authority for all user groups, including commercial users;
- Authority for all department agreements, including tribal, interstate, and international agreements;
- Budget approval for the agency;
- Approval of department rules and regulations;
- Responsibility for selection of commission staff; and
- Authority to appoint the director of the department.

Summary: The Legislature supports the recommendations of the Fish and Wildlife Commission with regard to its proposed role in the Department of Fish and Wildlife. Initial statutory changes are made to: Expand the commission's authority to food fish and shellfish and to commercial user groups; give the commission authority over all department agreements; allow the commission to approve the department's budget and rules; and give the commission the responsibility of selecting its own staff and appointing the director of the department. These statutory changes take effect July 1, 1996. By July 1, 1996, the commission must submit a report to the House and Senate Natural Resources Committees identifying other changes necessary for implementing the commission's recommendations.

In making appointments to the commission, the Governor is required to seek a balance reflecting all aspects of fish and wildlife, including representation recommended by organized groups representing sportfishers, commercial fishers, hunters, private landowners, and environmentalists. Commission appointees must comply with state laws on ethics in public service and public disclosure.

A referendum clause specifies that the act must be submitted for a vote of the people at the next succeeding general election.

Votes on Final Passage:

First Special Session

Senate	29	3
Senate	30	14 (Senate reconsidered)
House	68	29
House	73	24 (House reconsidered)

Effective: July 1, 1996 (Sections 2-43, upon voter approval at November 1995 general election)

EXHIBIT 13

SENATE BILL REPORT

SB 3067

BY Senators Hansen, Gaspard, Bottiger, Barr, Benitz, Vognild, Sellar, Goltz, Bailey and Newhouse

Modifying provisions relating to aquatic farming.

Senate Committee on Agriculture

Senate Hearing Date(s): January 23, 1985; January 29, 1985

Majority Report: Do pass.

Signed by Senators Hansen, Chairman; Goltz, Vice Chairman; Bailey, Barr, Bauer, Benitz.

Senate Staff: Ed Thorpe (786-7453); Bob Lee (786-7404)
January 29, 1985

Senate Committee on Ways and Means

Senate Hearing Date(s): February 12, 1985; February 20, 1985

Majority Report: Do pass.

Signed by Senators Gaspard, Vice Chairman; Bauer, Bluechel, Bottiger, Cantu, Craswell, Deccio, Hayner, Lee, McDonald, Moore, Rasmussen, Thompson, Warnke, Wojahn, Zimmerman.

Senate Staff: Gary Benson (786-7432)
February 21, 1985

AS REPORTED BY COMMITTEE ON WAYS AND MEANS, FEBRUARY 21, 1985

BACKGROUND:

The State of Washington is a major center for aquaculture farming in the United States. Procedures for rearing trout, salmon, oysters, clams, mussels and several types of marine plants in contained environments are well established in the state. Research and development on the cultivation of shrimp, scallops, abalone, crab, and crayfish point to the future potential for aquaculture farming of other plant and animal types in the state.

Aquatic farmers believe that growth of their industry is hindered by over-regulation by a variety of state agencies. The federal National Aquaculture Act recognizes aquaculture as an agricultural industry. Aquatic farmers feel that aquaculture should be under the control of the Department of Agriculture. The Department of Agriculture could not only provide the efficiency of an umbrella

agency regulating the industry but would also grant aquatic farmers access to those resources that are received by agricultural producers.

SUMMARY:

The Legislature declares that it is a policy of the state to encourage the development and expansion of aquaculture in the State of Washington. Aquaculture should be considered a branch of the agriculture industry. Ocean ranching is not authorized.

"Aquaculture," "aquatic farmer," "private sector cultured aquatic products," "department," and "director" are defined.

The Department of Agriculture is the lead agency for the private sector aquaculture industry.

The Director of the Department of Agriculture shall establish a program of disease inspection and control for aquatic farmers. The expertise of the state veterinarian shall be used in administering the program. The program may include, among other things: disease diagnosis, stock certification, quarantine provisions, destruction provisions, consultation services for aquatic farmers, designation of restricted shellfish areas, and permits for the importation of oysters or oyster seed. The Director of the Department of Agriculture, in administering the program, shall not place constraints or take enforcement actions on the aquaculture industry that are more rigorous than those placed on the Department of Fisheries, the Department of Game, or other fish rearing entities.

An Aquaculture Advisory Council is created.

The Department of Agriculture may adopt rules to implement this chapter.

Aquaculture is included in the definition of "agricultural commodity" for the purposes of the Washington State Agricultural Enabling Act of 1961.

Aquaculture is included in the definition of "agricultural commodity" for the purposes of the Washington Agriculture Enabling Act of 1955.

Aquaculture is included in the powers and duties of the Director of the Department of Agriculture.

Aquatic farmers may license their trucks as farm vehicles.

The Director of the Department of Fisheries may not adopt, amend or repeal rules concerning cultured aquatic products.

The Director of Fisheries may not designate restricted shellfish areas or issue transplant or transport permits applicable to private sector cultured aquatic products.

The Director of the Department of Fisheries may not issue permits for the importation of oysters or oyster seed that are applicable to private sector cultured aquatic products.

Aquaculture is exempted from Department of Fisheries delivery permit requirements.

The need for aquatic farmers to obtain an aquaculture permit from the Department of Fisheries is eliminated.

Department of Fisheries clam and oyster farm licenses are eliminated.

Cultured aquatic products are exempted from wholesale fish dealers' license requirements.

Cultured aquatic products are removed from the Department of Game's definition of "game fish."

The need for an aquaculturist to obtain a game farm license from the Department of Game is removed.

Cultured aquatic products are exempted from Department of Game tagging requirements.

Cultured aquatic products are exempted from Department of Game common carrier tagging requirements.

The need for an aquaculturist to obtain a permit is eliminated, except when stocking in public waters under contract with the Department of Game.

Aquaculture is included in the "farm and agricultural land" definition under the Open Space Lands Act.

Aquaculture is included in the agriculture exemption from the business and occupation tax.

Aquaculturists are removed from the "extractor" classification for purposes of the business and occupation tax.

The retail sales tax shall not apply to sales of feed to aquaculturists.

The use tax shall not apply to sales of feed to aquaculturists.

Reassurance is given that mention of a tax exemption does not imply recognition of present taxing authority.

Aquaculture is placed under the Department of Agriculture.

Department of Fisheries aquaculture permits, licenses, clam farm licenses and oyster farm licenses are repealed.

It is clarified that the tax on food fish and shellfish shall not apply to private sector cultured aquatic products.

Revenue: An exemption for raising fish, shellfish and aquatic plants from the business and occupation tax is provided; an exemption for private sector cultured aquatic products from the foodfish and shellfish tax is provided; the inclusion of lands used for private sector aquatic products in the Open Space Act is provided; and an exemption for the sales and use of fish food from the sales and use taxes is provided.

Fiscal Note: available

Senate Committee - Testified: AGRICULTURE: Mike Schwisow, Department of Agriculture; Kevin Amos, Department of Forestry; Pat Gygi, Department of Natural Resources; Joe La Tourette, Department of Game; Rod Mack, Department of Ecology; Jim Zimmerman, Washington Aquaculture Council; Greg Boniker, Washington Aquaculture Council; Dr. McLeary, Washington Aquaculture Council; John Olsen, Washington Aquaculture Council; Dr. Dan Cheney, Washington Aquaculture Council; Sam Hayes, oyster grower; Ralph Ferguson, "Save our Sound".

Senate Committee - Testified: WAYS AND MEANS: Jim Zimmerman, Washington Aquaculture Council; Greg Boniker, Washington Aquaculture Council; Dr. Dan McLeary, Washington Aquaculture Council; Dave McMillan, Olympia Oyster Co.; Brian Wood, Squaxin Island Tribe; Richard Heble, Private Aquaculture Consultant; Bob Bauer, Ellison Oyster Co.; Bill Wilkerson, Director, Department of Fisheries

FISCAL NOTE

910

REQUEST NO. 4

BILL NO. SB 3067	RESPONDING AGENCY Department of Revenue	
TITLE Exempt aquaculture from B&O tax, sales tax on feed, current use value on land	PREPARED BY Donn Smallwood <i>DS</i>	DATE 1/23/85
	TITLE Chief, Research & Statistics	SCAN 3-5542
	REVIEWED BY OFM	DATE

Fiscal impact of the above legislation on Washington State government is estimated to be: NONE AS SHOWN BELOW

Figures in parentheses represent reductions.
Detail supporting these estimates is
contained in Form FN-2.

First Biennium 19 85 — 19 87

REVENUE TO:				1ST YEAR	2ND YEAR	TOTAL	FIRST SIX YEARS
FUND	CODE	SOURCE TITLE	CODE				
GENERAL FUND — STATE	001	Sales	101	(\$117,000)	(\$121,000)	(\$238,000)	(\$758,000)
GENERAL FUND — FEDERAL	001	B&O	105	(58,000)	(60,000)	(118,000)	(380,000)
OTHER *							
TOTALS				(\$175,000)	(\$181,000)	(\$356,000)	(\$1,138,000)

EXPENDITURES FROM:							
FUND	CODE						
GENERAL FUND — STATE	001						
GENERAL FUND — FEDERAL	001						
OTHER *							
TOTALS							

* Itemize all other, including non-appropriated funds and/or accounts within the General Fund.

EXPENDITURES BY OBJECT OR PURPOSE:							
FTE STAFF YEARS							
SALARIES AND WAGES							
PERSONAL SERVICE CONTRACTS							
GOODS AND SERVICES							
TRAVEL							
EQUIPMENT							
EMPLOYEE BENEFITS							
GRANTS AND SUBSIDIES							
INTERAGENCY REIMBURSEMENT							
DEBT SERVICE							
CAPITAL OUTLAYS							
TOTALS							

Check this box if the above legislation has cash flow impact per instructions:
Show cash flow impact on FN-2.

Check this box if the above legislation has fiscal impact on local governments:
Do not include local government impact on FN-1.

FISCAL NOTE

REQUEST NUMBER 4

Department of Revenue
Responding Agency

140
Code No.

Bill No. SB-3067

January 23, 1985
Date Submitted

Description:

Note: This fiscal note deals only with those sections (23-29) of SB 3067 that impact the taxes administered by the Department of Revenue.

Sections 23 and 24 exempt from the business and occupation tax persons cultivating or raising fish, shellfish, or aquatic plants in confined areas on their own land or on land where they have the right of possession (fresh or salt water). Such persons cultivating fish are deemed to be extractors and are subject to a .484 percent rate. Cultivators of shellfish are considered manufacturers of raw seafood products and are subject to the special B&O rate of .1375 percent.

The measure, in sections 27 and 28, also exempts purchases of feed for such purposes from the state and local sales/use taxes. This exemption, in essence, applies only to those raising fish, as the shellfish are fed natural food contained in salt water.

Since the Department of Fisheries and other state agencies are not "a person" for tax purposes, they are not affected by SB 3067. They are presently exempt from business and occupation tax and will continue to pay sales tax on their purchases of feed.

Section 25 exempts these businesses from the fish privilege tax imposed by RCW 82.27.020, although it appears that few, if any, are presently subject to the tax.

Section 26 of SB 3067 expands the definition of "farm and agricultural lands" for purposes of qualification for current use assessment to include these businesses. Therefore, for those lands which are subject to the property tax (many are leased and subject to the leasehold tax) they would be valued on the basis of their current use rather than their highest and best use (market value).

Section 29 states that SB 3067 does not imply that these persons were taxable under the B&O tax prior to enactment of the proposal.

SB 3067 has no emergency clause nor specified effective date.

Fiscal Impact:

For purposes of the fiscal impact estimate, SB 3067 is assumed to be effective June 1, 1985.

The estimated reduction in B&O tax is \$118,000 during the 1985-87 biennium from the approximately 25 taxpayers impacted by this measure. The state

FISCAL NOTE

Page 3

REQUEST NUMBER 4

Department of Revenue
Responding Agency

140
Code No.

Bill No. SB-3067

January 23, 1985

Date Submitted

sales tax reduction is expected to be \$238,000 from feed purchases of those raising fish only.

Valuation data was not available at the time this note was prepared. Discussion with representatives of the industry indicates that many of the shellfish growers are leasing land from the Department of Natural Resources and thus would not be impacted, being subject to the leasehold excise tax. For those who are paying property tax, it is assumed that the reductions under current use valuation would not cause a loss in revenue to the state or any local taxing district, but would be shifted in the form of very slight increases in tax rates, applied to the lower values for these properties and to the other property in their respective counties.

SB 3067 is presumed to have essentially no impact on the fish privilege tax.

Expenditure Impact:

SB 3067 should have no impact on Department of Revenue expenditures.

EXHIBIT 14

SENATE BILL 5466

State of Washington

65th Legislature

2017 Regular Session

By Senators McCoy, Chase, and Fortunato; by request of Department of Fish and Wildlife

Read first time 01/25/17. Referred to Committee on Natural Resources & Parks.

1 AN ACT Relating to construction projects in state waters;
2 amending RCW 77.55.141, 77.55.181, 77.55.231, and 77.55.291; adding
3 new sections to chapter 77.55 RCW; repealing RCW 77.55.321; and
4 prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 77.55.141 and 2010 c 210 s 28 are each amended to
7 read as follows:

8 (1) In order to protect the property of marine waterfront
9 shoreline owners it is necessary to facilitate issuance of permits
10 for bulkheads or rockwalls under certain conditions.

11 (2) The department (~~shall~~) may issue a permit with (~~or~~
12 ~~without~~) conditions within forty-five days of receipt of a complete
13 and accurate application which authorizes commencement of
14 construction, replacement, or repair of a marine beach front
15 protective bulkhead or rockwall for single-family type residences
16 (~~or property~~) under the following conditions:

17 (a) The applicant provides a geotechnical analysis that
18 demonstrates that erosion from waves or currents is imminently
19 threatening or that, unless the new bulkhead or rockwall is
20 constructed, damage is expected to occur within three years;

21 (b) The erosion is not caused by upland conditions;

1 (c) The proposed bulkhead or rockwall will provide greater
2 protection than feasible, nonstructural alternatives such as slope
3 drainage systems, vegetative growth stabilization, gravel berms, and
4 beach nourishment;

5 (d) The proposal is the minimum necessary to protect existing
6 legally established single-family type residences;

7 (e) Adequate mitigation measures will be provided to maintain
8 existing shoreline processes and critical food fish or shellfish
9 habitats;

10 (f) The waterward face of a new bulkhead or rockwall shall be
11 located only as far waterward as is necessary to excavate for
12 footings or place base rock for the structure and under no conditions
13 shall be located more than six feet waterward of the ordinary high
14 water line;

15 ~~((b))~~ (g) Any bulkhead or rockwall to replace or repair an
16 existing bulkhead or rockwall shall be placed along the same
17 alignment as the bulkhead or rockwall it is replacing. However, the
18 replaced or repaired bulkhead or rockwall may be placed waterward of
19 and directly abutting the existing structure only in cases where
20 removal of the existing bulkhead or rockwall would result in
21 environmental degradation or removal problems related to geological,
22 engineering, or safety considerations; ~~(and~~

23 ~~(e))~~ (h) Construction of a new bulkhead or rockwall, or
24 replacement or repair of an existing bulkhead or rockwall waterward
25 of the existing structure shall not result in the ~~((permanent))~~ net
26 loss of critical food fish or shellfish habitats; and

27 ~~((d))~~ (i) Timing constraints shall be applied on a case-by-case
28 basis for the protection of critical habitats, including but not
29 limited to migration corridors, rearing and feeding areas, and
30 spawning habitats, for the proper protection of fish life.

31 (3) Any bulkhead or rockwall construction, replacement, or repair
32 not meeting the conditions in this section shall be processed under
33 this chapter in the same manner as any other application.

34 (4) Any person aggrieved by the approval, denial, conditioning,
35 or modification of a permit under this section may appeal the
36 decision as provided in RCW 77.55.021~~((4))~~ (8).

37 **Sec. 2.** RCW 77.55.181 and 2014 c 120 s 1 are each amended to
38 read as follows:

1 (1)(a) In order to receive the permit review and approval process
2 created in this section, a fish habitat enhancement project must meet
3 the criteria under this section and must be a project to accomplish
4 one or more of the following tasks:

5 (i) Elimination of human-made or caused fish passage barriers,
6 including culvert repair and replacement;

7 (ii) Restoration of an eroded or unstable stream bank employing
8 the principle of bioengineering, including limited use of rock as a
9 stabilization only at the toe of the bank, and with primary emphasis
10 on using native vegetation to control the erosive forces of flowing
11 water; ~~((or))~~

12 (iii) Placement of woody debris, spawning material, or other
13 ~~((instream))~~ habitat structures that benefit naturally reproducing
14 fish stocks;

15 (iv) Restoration of marine and lake shorelines by removing
16 armoring and other hard shoreline stabilization structures, or
17 replacing hard shoreline structures with natural or soft techniques,
18 with primary emphasis on using native vegetation, root wads, large
19 woody material, and beach nourishment to mimic natural shoreline
20 processes; or

21 (v) Restoration of lake and marine nearshore by removing docks
22 and other human-made structures.

23 (b) ~~((The department shall develop size or scale threshold tests
24 to determine if projects accomplishing any of these tasks should be
25 evaluated under the process created in this section or under other
26 project review and approval processes.))~~ A project proposal shall not
27 be reviewed under the process created in this section if the
28 department or the local government determines that the scale of the
29 project raises environmental and public health and safety concerns
30 ~~((regarding public health and safety))~~ or if the department
31 determines that fish or fish habitat would be adversely impacted by
32 the project.

33 (c) A fish habitat enhancement project must be approved in one of
34 the following ways in order to receive the permit review and approval
35 process created in this section:

36 (i) By the department pursuant to chapter 77.95 or 77.100 RCW;

37 (ii) By the sponsor of a watershed restoration plan as provided
38 in chapter 89.08 RCW;

39 (iii) By the department as a department-sponsored fish habitat
40 enhancement or restoration project;

1 (iv) (~~Through the review and approval process for the jobs for~~
2 ~~the environment program;~~) By a tribe as a tribal sponsored fish
3 habitat enhancement or restoration project;

4 (v) Through the review and approval process for conservation
5 district-sponsored projects, where the project complies with design
6 standards established by the conservation commission through
7 interagency agreement with the (~~United States fish and wildlife~~
8 ~~service and the natural resource conservation service~~) department;

9 (vi) Through a formal grant program established by the
10 legislature or the department for fish habitat enhancement or
11 restoration;

12 (vii) Through the department of transportation's environmental
13 retrofit program as a stand-alone fish passage barrier correction
14 project;

15 (viii) Through a local, state, or federally approved fish barrier
16 removal grant program designed to assist local governments in
17 implementing stand-alone fish passage barrier corrections;

18 (ix) By a city or county for a stand-alone fish passage barrier
19 correction project funded by the city or county; and

20 (x) Through other formal review and approval processes
21 established by the legislature.

22 (2) Fish habitat enhancement projects meeting the criteria of
23 subsection (1) of this section are expected to result in beneficial
24 impacts to the environment. Decisions pertaining to fish habitat
25 enhancement projects meeting the criteria of subsection (1) of this
26 section and being reviewed and approved according to the provisions
27 of this section are not subject to the requirements of RCW
28 43.21C.030(2)(c).

29 (3)(a) A permit is required for projects that meet the criteria
30 of subsection (1) of this section and are being reviewed and approved
31 under this section. An applicant shall use the department's online
32 permit application system or a joint aquatic resource permit
33 application form developed by the office of regulatory assistance to
34 apply for approval under this chapter. (~~On the same day, the~~
35 ~~applicant shall provide copies of~~) Upon receipt of a complete
36 application, the department shall notify the local government that
37 the completed application form (~~to the department and to each~~
38 ~~appropriate local government~~) is available for review in the online
39 permit system.

1 (b) Notification by the department to the local governments shall
2 (~~accept the application~~) serve as notice of the proposed project.
3 The department shall provide a (~~fifteen-day~~) thirty-day comment
4 period during which it will receive comments regarding potential
5 environmental and public health and safety impacts.

6 (c) Within forty-five days, the department shall either issue a
7 permit, with or without conditions, deny approval, or make a
8 determination that the review and approval process created by this
9 section is not appropriate for the proposed project. The department
10 shall base this determination on identification during the comment
11 period of adverse impacts that cannot be mitigated by the
12 conditioning of a permit.

13 (d) If the department determines that the review and approval
14 process created by this section is not appropriate for the proposed
15 project, the department shall notify the applicant and the
16 appropriate local governments of its determination. The applicant may
17 reapply for approval of the project under other review and approval
18 processes.

19 (e) Any person aggrieved by the approval, denial, conditioning,
20 or modification of a permit under this section may appeal the
21 decision as provided in RCW 77.55.021(8).

22 (4) No local government may require permits or charge fees for
23 fish habitat enhancement projects that meet the criteria of
24 subsection (1) of this section and that are reviewed and approved
25 according to the provisions of this section.

26 (5) No civil liability may be imposed by any court on the state
27 or its officers and employees for any adverse impacts resulting from
28 a fish enhancement project permitted by the department under the
29 criteria of this section except upon proof of gross negligence or
30 willful or wanton misconduct.

31 **Sec. 3.** RCW 77.55.231 and 2012 1st sp.s. c 1 s 106 are each
32 amended to read as follows:

33 (1) Conditions imposed upon a permit must be reasonably related
34 to the project. The permit conditions must ensure that the project
35 provides proper protection for fish life, but the department may not
36 impose conditions that attempt to optimize conditions for fish life
37 that are out of proportion to the impact of the proposed project.

1 (2) The permit must contain provisions (~~(allowing for minor)~~)
2 exempting the following modifications from all fees listed under this
3 section:

4 (a) Minor modifications to the plans and specifications (~~(without~~
5 ~~requiring reissuance of the permit.~~

6 ~~(3) The permit must contain provisions that allow for~~);

7 (b) Minor modifications to the required work timing (~~(without~~
8 ~~requiring the reissuance of the permit)~~). "Minor modifications to the
9 required work timing" means a minor deviation from the timing window
10 set forth in the permit when there are no spawning or incubating fish
11 present within the vicinity of the project; and

12 (c) Transfer of a permit to a new permittee or authorized agent.

13 NEW SECTION. Sec. 4. A new section is added to chapter 77.55
14 RCW to read as follows:

15 (1) When the department determines that a violation has or is
16 about to occur, it shall first attempt to achieve voluntary
17 compliance, provided the violation is not causing harm to fish life
18 or fish habitat.

19 (2) As part of this first response, the department must offer
20 information and technical assistance to the person, identifying one
21 or more means to accomplish the person's purposes within the
22 framework of the law. The department must provide a reasonable
23 timeline for voluntary compliance to be achieved that takes into
24 consideration factors specific to the violation, such as the
25 complexity of the hydraulic project, the actual or potential risk to
26 fish life or fish habitat, and the environmental conditions at the
27 time of the first response.

28 (3) If the department determines that a violation is causing harm
29 to fish life or fish habitat, the department shall take immediate
30 action to end the violation.

31 (4) If a person violates this chapter, or any of the rules
32 adopted by the department that implement this chapter, the department
33 may issue a notice to comply, stop work order, or civil penalty.

34 NEW SECTION. Sec. 5. A new section is added to chapter 77.55
35 RCW to read as follows:

36 (1) The department has the authority to serve a person a stop
37 work order, which is a final order of the department, if:

1 (a) There is any violation of the provisions of this chapter or
2 the department's rules;

3 (b) There is a deviation from the hydraulic project approval; or

4 (c) Immediate action is necessary to prevent continuation of or
5 to avoid material damage to fish life.

6 (2)(a) A stop work order must set forth:

7 (i) The specific nature, extent, and time of the violation,
8 deviation, damage, or potential damage;

9 (ii) The specific course of action needed to correct or prevent a
10 continuing violation, deviation, damage, or potential damage; and

11 (iii) The right of the person to a hearing before the board.

12 (b) A stop work order may require that the person stop all work
13 connected with the violation until corrective action is taken.

14 (3) The department shall mail a copy of such an order to the
15 applicant and landowner at the address shown on the hydraulic project
16 application within five business days.

17 (4) Issuance of a stop work order may be informally appealed by
18 the applicant or landowner to the department within thirty days from
19 the date of receipt of the penalty. Requests for informal appeal must
20 be filed in the form and manner prescribed by the department by rule.
21 A stop work order that has been informally appealed to the department
22 is appealable to the appeals board within thirty days from the date
23 of receipt of the department's decision on the informal appeal.

24 (5) The applicant or landowner may commence an appeal to the
25 board within thirty days from the date of receipt of the stop work
26 order. If such an appeal is commenced, the proceeding is an
27 adjudicative proceeding under chapter 34.05 RCW, the administrative
28 procedure act. The recipient must comply with the order of the
29 department immediately upon being served, but the board may
30 discontinue the order, upon motion, under such conditions as the
31 board may impose.

32 NEW SECTION. **Sec. 6.** A new section is added to chapter 77.55
33 RCW to read as follows:

34 (1)(a) If a violation, deviation, damage, or potential damage to
35 fish life has occurred and the department determines that a stop work
36 order is unnecessary, then the department shall issue and serve upon
37 the applicant and landowner a notice to comply, which must clearly
38 set forth:

39 (i) The nature, extent, date, and time of the violation;

- 1 (ii) Any necessary corrective action; and
2 (iii) The right of the person to an appeal.

3 (b) The notice to comply may require that the person take
4 corrective action to prevent, correct, or compensate for adverse
5 impacts to fish life.

6 (2) The department shall mail a copy of such a notice to the
7 applicant and landowner at the address shown on the hydraulic project
8 application within five business days.

9 (3) Issuance of such a notice may be informally appealed by the
10 applicant or landowner to the department within thirty days from the
11 date of receipt of the penalty. Requests for informal appeal must be
12 filed in the form and manner prescribed by the department by rule. A
13 notice to comply that has been informally appealed to the department
14 is appealable to the appeals board within thirty days from the date
15 of receipt of the department's decision on the informal appeal.

16 (4) The applicant or landowner may commence an appeal to the
17 board within thirty days from the date of receipt of the notice. If
18 such an appeal is commenced, the proceeding is an adjudicative
19 proceeding under chapter 34.05 RCW, the administrative procedure act.
20 The recipient must comply with the notice to comply immediately upon
21 being served, but the board may discontinue the notice to comply,
22 upon motion, under such conditions as the board may impose.

23 **Sec. 7.** RCW 77.55.291 and 2010 c 210 s 31 are each amended to
24 read as follows:

25 (1) The department may levy civil penalties of up to ((one
26 hundred dollars per day for violation of any provisions of RCW
27 77.55.021. The penalty provided shall be imposed by notice in
28 writing, either by certified mail or personal service to the person
29 incurring the penalty, from the director or the director's designee
30 describing the violation)) ten thousand dollars for every violation
31 of this chapter or the rules adopted to implement this chapter. Each
32 and every violation is a separate and distinct civil offense. The
33 penalty provided must be imposed by notice in writing by the
34 department, either by certified mail or personal service to the
35 person incurring the penalty, describing the violation. The civil
36 penalty notice must specify the:

- 37 (a) Basis for the penalty and the amount levied; and
38 (b) Right of the person to an appeal.

1 (2)(a) Except as provided in (b) of this subsection, any person
2 incurring any penalty under this chapter may appeal the same under
3 chapter 34.05 RCW to the board. Appeals shall be filed within thirty
4 days from the date of receipt of the penalty in accordance with RCW
5 43.21B.230.

6 (b) Issuance of a civil penalty may be informally appealed by the
7 applicant or landowner to the department within thirty days from the
8 date of receipt of the penalty. Requests for informal appeal must be
9 filed in the form and manner prescribed by the department by rule. A
10 civil penalty that has been informally appealed to the department is
11 appealable to the board within thirty days from the date of receipt
12 of the department's decision on the informal appeal.

13 (3) The penalty imposed shall become due and payable thirty days
14 after receipt of a notice imposing the penalty unless an appeal is
15 filed. Whenever an appeal of any penalty incurred under this chapter
16 is filed, the penalty shall become due and payable only upon
17 completion of all review proceedings and the issuance of a final
18 order confirming the penalty in whole or in part. When the penalty
19 becomes past due, it is also subject to interest at the rate allowed
20 by RCW 43.17.240 for debts owed to the state.

21 (4) If the amount of any penalty is not paid within thirty days
22 after it becomes due and payable, the attorney general, upon the
23 request of the director, shall bring an action in the name of the
24 state of Washington in the superior court of Thurston county or of
25 ~~((any))~~ the county in which such ~~((violation occurred))~~
26 violation occurred, to recover such penalty. In all such actions the
27 procedure and rules of evidence shall be the same as an ordinary
28 civil action. All penalties ~~((recovered under this section shall be~~
29 ~~paid into the state's general fund))~~ received or recovered by state
30 agency action for violations as prescribed in subsection (1) of this
31 section must be deposited into the state's general fund. The
32 department is also entitled to recover reasonable attorneys' fees and
33 costs incurred in connection with the penalty recovered under this
34 section.

35 (5) The department shall adopt by rule a penalty schedule to be
36 effective by January 1, 2018. The schedule must be developed in
37 consideration of the following:

38 (a) Previous violation history;

39 (b) Severity of the impact on fish and fish habitat;

1 (c) Whether the violation of this chapter or its rules was
2 intentional;

3 (d) Cooperation with the department;

4 (e) Reparability of the adverse effect from the violation; and

5 (f) The extent to which a penalty to be imposed on a person for a
6 violation committed by another should be reduced if the person was
7 unaware of the violation and has not received a substantial economic
8 benefit from the violation.

9 NEW SECTION. Sec. 8. A new section is added to chapter 77.55
10 RCW to read as follows:

11 The department may apply for an administrative inspection warrant
12 in either Thurston county superior court or the superior court in the
13 county where the project is located. The court may issue an
14 administrative inspection warrant where:

15 (1) Department personnel need to inspect the project site to
16 ensure compliance with this chapter and rules adopted to implement
17 this chapter; or

18 (2) Department personnel have probable cause to believe that a
19 violation of this chapter or of the rules adopted to implement this
20 chapter is occurring or has occurred.

21 NEW SECTION. Sec. 9. A new section is added to chapter 77.55
22 RCW to read as follows:

23 (1) The department shall charge fees for hydraulic project
24 approvals issued under RCW 77.55.021 to recover a portion of the
25 costs for processing and issuing decisions on permit applications,
26 administering fee collections, and compliance and effectiveness
27 monitoring and enforcement of projects requiring a permit. The fees
28 are based on the scale and complexity of the project and the relative
29 effort required for department staff to review the application,
30 conduct site visits, consult with applicants as necessary, and issue
31 or deny the permit.

32 (2) For the purposes of assessing fees for permits under
33 subsection (1) of this section, the department must categorize the
34 following repair or maintenance hydraulic projects as low complexity:

35 (a) Emergencies;

36 (b) Freshwater beach habitat creation;

37 (c) Beaver dams;

38 (d) Breeding substrate;

- 1 (e) Large woody material work;
- 2 (f) Riparian habitat work;
- 3 (g) Wetlands or estuarine habitat work;
- 4 (h) Conduit or cable work using boring;
- 5 (i) Dredging less than fifty cubic yards of bed material;
- 6 (j) Water crossings, including a bridge, culvert, or ford, in
7 nonfish-bearing waters;
- 8 (k) Bridge work exclusively above the ordinary high water line;
- 9 (l) Shoreline modification or bank protection of less than one
10 hundred feet, not associated with jetties, dikes, or levees;
- 11 (m) Booms;
- 12 (n) Anchoring or mooring buoys and navigation aids;
- 13 (o) Piling work;
- 14 (p) Overwater structures, not including marinas or marine
15 terminals;
- 16 (q) Boat lifts or railway launches;
- 17 (r) Boat ramps or launches;
- 18 (s) Timber felling and yarding activities;
- 19 (t) Temporary or permanent stream gauges or other scientific
20 instruments;
- 21 (u) Outfalls;
- 22 (v) Tidegates;
- 23 (w) Mechanical aquatic plant control not addressed by the aquatic
24 plants and fish pamphlet;
- 25 (x) Pump water diversions and fish screens; and
- 26 (y) Gravity water diversions and fish screens.
- 27 (3) When assessing fees for permits under subsection (1) of this
28 section, the department must categorize the following new,
29 replacement, or removal hydraulic projects as low complexity:
- 30 (a) Beaver dams;
- 31 (b) Conduit or cable work using boring;
- 32 (c) Bridge work exclusively above the ordinary high water line;
- 33 (d) Booms;
- 34 (e) Anchoring or mooring buoys and navigation aids;
- 35 (f) Overwater structures in the current footprint, not including
36 marinas or marine terminals;
- 37 (g) Boat ramps or launches within the existing footprint of an
38 existing structure;
- 39 (h) Timber felling and yarding activities; and

1 (i) Temporary or permanent stream gauges or other scientific
2 instruments.

3 (4) When assessing fees for permits under subsection (1) of this
4 section, the department must categorize the following repair or
5 maintenance hydraulic projects as medium complexity:

6 (a) Aquaculture;

7 (b) Off channel, side channel, or in-channel enhancement or
8 restoration work, not including projects that are exclusively large
9 woody material work;

10 (c) Channel realignment work;

11 (d) Bed modification, not including habitat enhancement or
12 restoration and dredging;

13 (e) Conduit or cable work using trenching;

14 (f) Dredging greater than fifty cubic yards of bed material;

15 (g) Water crossings, including a bridge, culvert, or ford, in
16 fish-bearing waters, not including fish passage retrofits;

17 (h) Fish passage barrier removal with replacement or retrofit
18 using such methods as baffles or log controls for passage through or
19 over a structure;

20 (i) Fish passage not associated with a water crossing structure,
21 such as a bypass of a natural barrier or a fishway to bypass a dam;

22 (j) Shoreline modification or bank protection greater than one
23 hundred feet that is not associated with jetties, dikes, or levees;

24 (k) Jetties, dikes, or levees;

25 (l) Overwater structures outside of the footprint of an existing
26 structure, not including marinas or marine terminals;

27 (m) Marinas and marine terminals; and

28 (n) Dams not under jurisdiction of the federal energy regulatory
29 commission.

30 (5) When assessing fees for permits under subsection (1) of this
31 section, the department must categorize the following new,
32 replacement, or removal hydraulic projects as medium complexity:

33 (a) Emergencies;

34 (b) Aquaculture;

35 (c) Freshwater beach habitat creation;

36 (d) Breeding substrate;

37 (e) Large woody material work;

38 (f) Riparian habitat work;

39 (g) Conduit or cable work using trenching;

40 (h) Dredging less than fifty cubic yards of bed material;

- 1 (i) Water crossings, including a bridge, culvert, or ford, in
2 nonfish-bearing waters;
- 3 (j) Shoreline modification or bank protection less than one
4 hundred feet, not associated with jetties, dikes, or levees;
- 5 (k) Piling work;
- 6 (l) Overwater structures outside of the footprint of an existing
7 structure, not including marinas or marine terminals;
- 8 (m) Boat lifts or railway launches;
- 9 (n) Boat ramps or launches outside of the footprint of an
10 existing structure;
- 11 (o) Outfalls;
- 12 (p) Tidegates;
- 13 (q) Mechanical aquatic plant control not addressed by the aquatic
14 plants and fish pamphlet;
- 15 (r) Mineral prospecting not addressed by the gold and fish
16 pamphlet;
- 17 (s) Pump water diversions and fish screens; and
- 18 (t) Gravity water diversions and fish screens.
- 19 (6) When assessing fees for permits under subsection (1) of this
20 section, the department must categorize the following new,
21 replacement, or removal hydraulic projects as high complexity:
- 22 (a) Off channel, side channel, or in-channel enhancement or
23 restoration work, not including projects that are exclusively large
24 woody material work;
- 25 (b) Wetland or estuarine habitat work;
- 26 (c) Channel realignment work;
- 27 (d) Bed modification, not including habitat enhancement or
28 restoration and dredging;
- 29 (e) Dredging greater than fifty cubic yards of bed material;
- 30 (f) Water crossings, including a bridge, culvert, or ford, in
31 fish-bearing waters, not including fish passage retrofits;
- 32 (g) Fish passage barrier removal with replacement or retrofit
33 using such methods as baffles or log controls for passage through or
34 over a structure;
- 35 (h) Fish passage not associated with a water crossing structure,
36 such as a bypass of a natural barrier or a fishway to bypass a dam;
- 37 (i) Shoreline modification or bank protection greater than one
38 hundred feet, not associated with jetties, dikes, or levees;
- 39 (j) Jetties, dikes, or levees;
- 40 (k) Marinas and marine terminals; and

1 (1) Dams not under jurisdiction of the federal energy regulatory
2 commission.

3 (7) If the department receives an application for a project type
4 not identified in subsections (2) through (6) of this section, it
5 shall categorize them as low, medium, or high risk and charge fees
6 based on those categories consistent with the most similar project
7 types identified in subsections (2) through (6) of this section.

8 (8) The department must charge the following fees. Until January
9 1, 2018, the fee is one hundred fifty dollars. Beginning January 1,
10 2018, the following applies:

11 (a) A notification/application submittal fee of one hundred fifty
12 dollars for a low complexity hydraulic project;

13 (b) An application submittal fee of two hundred fifty dollars for
14 a medium complexity hydraulic project;

15 (c) An application submittal fee of five hundred dollars for a
16 high complexity hydraulic project; and

17 (d) An application submittal fee of one thousand dollars for a
18 general hydraulic project approval.

19 (9) In cases where hydraulic projects include work that falls
20 into more than one of the permit categories outlined in subsection
21 (8) of this section, the fee charged must be based on the most
22 complex component of the project.

23 (10) In addition to the base fee defined in subsection (8) of
24 this section, the department must charge the following additional
25 fees except where exempted in RCW 77.55.231:

26 (a) A one hundred dollar fee for modifications to low complexity
27 hydraulic projects;

28 (b) A one hundred twenty-five dollar fee for modifications to
29 medium complexity hydraulic projects;

30 (c) A two hundred fifty dollar fee for modifications to high
31 complexity hydraulic projects;

32 (d) A five hundred dollar fee for modifications to general
33 hydraulic project approvals;

34 (e) A one hundred fifty dollar fee for extensions to the end date
35 of a project approval; and

36 (f) A thirty dollar fee for applications submitted without using
37 the online system.

38 (11) The following hydraulic projects are exempt from all fees
39 listed under this section:

1 (a) Hydraulic projects approved under applicant-funded contracts
2 with the department that pay for the costs of processing those
3 projects;

4 (b) Pamphlet hydraulic projects;

5 (c) Mineral prospecting and mining activities;

6 (d) Hydraulic projects occurring on farm and agricultural land,
7 as that term is defined in RCW 84.34.020; and

8 (e) Fish habitat enhancement projects as provided for in RCW
9 77.55.181.

10 (12) The department shall refund fifty percent of the permit
11 processing fee to any person that properly applies for any permit or
12 permit modification under RCW 77.55.021 if the department fails to
13 process the application or request within the timelines required by
14 RCW 77.55.021.

15 (13) The department shall refund one hundred percent of all fees
16 if:

17 (a) No permit is required for the proposed work; or

18 (b) The hydraulic project is exempt from substantial development
19 permit requirements under RCW 90.58.147 and the project proponent
20 provides the department a copy of the letter documenting exemption
21 approval by the local government.

22 (14) Prior to submitting its biennial operating budget every two
23 years to the office of financial management, the department shall
24 send a report to the appropriate committees of the legislature on the
25 progress of the hydraulic project approval program.

26 NEW SECTION. **Sec. 10.** RCW 77.55.321 (Application fee for a
27 hydraulic project permit or permit modification—Projects exempt from
28 fees—Disposition of fees) and 2012 1st sp.s. c 1 s 103 are each
29 repealed.

--- END ---

EXHIBIT 15

HOUSE BILL 2220

State of Washington

60th Legislature

2007 Regular Session

By Representative Lantz

Read first time 02/13/2007. Referred to Committee on Select
Committee on Puget Sound.

1 AN ACT Relating to shellfish; and creating a new section.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

3 NEW SECTION. **Sec. 1.** The legislature finds that shellfish
4 aquaculture is an important and dynamic industry in the state of
5 Washington. Managing and regulating the industry involves a careful
6 balancing act among various goals, including environmental protection,
7 economic development, property rights, aesthetics, and the simple
8 enjoyment of the shoreline. Complicating the state's efforts is a lack
9 of available, credible scientific information on the affects that new
10 industry developments have on the natural environment. With this act,
11 the legislature intends to address the challenges inherent in managing
12 and regulating shellfish aquaculture, and begin the process of
13 developing a consistent, predictable regulatory program that respects
14 the role of local governments, protects the interests of the state, and
15 operates within the scope of the federal government.

--- END ---

EXHIBIT 16

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 2220

Chapter 216, Laws of 2007

60th Legislature
2007 Regular Session

SHELLFISH AQUACULTURE

EFFECTIVE DATE: 07/22/07

Passed by the House April 20, 2007
Yeas 98 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 20, 2007
Yeas 45 Nays 1

BRAD OWEN

President of the Senate

Approved April 27, 2007, 2:28 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 2220** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

April 30, 2007

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 2220

AS AMENDED BY THE SENATE

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By House Committee on Appropriations (originally sponsored by Representative Lantz)

READ FIRST TIME 03/05/07.

1 AN ACT Relating to shellfish; amending RCW 79.135.100 and
2 77.115.040; adding new sections to chapter 28B.20 RCW; and creating new
3 sections.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 28B.20 RCW
6 to read as follows:

7 (1) The sea grant program at the University of Washington shall,
8 consistent with this section, commission a series of scientific
9 research studies that examines the possible effects, including the
10 cumulative effects, of the current prevalent geoduck aquaculture
11 techniques and practices on the natural environment in and around Puget
12 Sound, including the Strait of Juan de Fuca. The sea grant program
13 shall use funding provided from the geoduck aquaculture research
14 account created in section 2 of this act to review existing literature,
15 directly perform research identified as needed, or to enter into and
16 manage contracts with scientific organizations or institutions to
17 accomplish these results.

18 (2) Prior to entering into a contract with a scientific
19 organization or institution, the sea grant program must:

1 (a) Analyze, through peer review, the credibility of the proposed
2 party to the contract, including whether the party has credible
3 experience and knowledge and has access to the facilities necessary to
4 fully execute the research required by the contract; and

5 (b) Require that all proposed parties to a contract fully disclose
6 any past, present, or planned future personal or professional
7 connections with the shellfish industry or public interest groups.

8 (3) All research commissioned under this section must be subjected
9 to a rigorous peer review process prior to being accepted and reported
10 by the sea grant program.

11 (4) In prioritizing and directing research under this section, the
12 sea grant program shall meet with the department of ecology at least
13 annually and rely on guidance submitted by the department of ecology.
14 The department of ecology shall convene the shellfish aquaculture
15 regulatory committee created in section 4 of this act as necessary to
16 serve as an oversight committee to formulate the guidance provided to
17 the sea grant program. The objective of the oversight committee, and
18 the resulting guidance provided to the sea grant program, is to ensure
19 that the research required under this section satisfies the planning,
20 permitting, and data management needs of the state, to assist in the
21 prioritization of research given limited funding, and to help identify
22 any research that is beneficial to complete other than what is listed
23 in subsection (5) of this section.

24 (5) To satisfy the minimum requirements of subsection (1) of this
25 section, the sea grant program shall review all scientific research
26 that is existing or in progress that examines the possible effect of
27 currently prevalent geoduck practices, on the natural environment, and
28 prioritize and conduct new studies as needed, to measure and assess the
29 following:

30 (a) The environmental effects of structures commonly used in the
31 aquaculture industry to protect juvenile geoducks from predation;

32 (b) The environmental effects of commercial harvesting of geoducks
33 from intertidal geoduck beds, focusing on current prevalent harvesting
34 techniques, including a review of the recovery rates for benthic
35 communities after harvest;

36 (c) The extent to which geoducks in standard aquaculture tracts
37 alter the ecological characteristics of overlying waters while the

1 tracts are submerged, including impacts on species diversity, and the
2 abundance of other benthic organisms;

3 (d) Baseline information regarding naturally existing parasites and
4 diseases in wild and cultured geoducks, including whether and to what
5 extent commercial intertidal geoduck aquaculture practices impact the
6 baseline;

7 (e) Genetic interactions between cultured and wild geoduck,
8 including measurements of differences between cultured geoducks and
9 wild geoducks in terms of genetics and reproductive status; and

10 (f) The impact of the use of sterile triploid geoducks and whether
11 triploid animals diminish the genetic interactions between wild and
12 cultured geoducks.

13 (6) If adequate funding is not made available for the completion of
14 all research required under this section, the sea grant program shall
15 consult with the shellfish aquaculture regulatory committee, via the
16 department of ecology, to prioritize which of the enumerated research
17 projects have the greatest cost/benefit ratio in terms of providing
18 information important for regulatory decisions; however, the study
19 identified in subsection (5)(b) of this section shall receive top
20 priority. The prioritization process may include the addition of any
21 new studies that may be appropriate in addition to, or in place of,
22 studies listed in this section.

23 (7) When appropriate, all research commissioned under this section
24 must address localized and cumulative effects of geoduck aquaculture.

25 (8) The sea grant program and the University of Washington are
26 prohibited from retaining greater than fifteen percent of any funding
27 provided to implement this section for administrative overhead or other
28 deductions not directly associated with conducting the research
29 required by this section.

30 (9) Individual commissioned contracts under this section may
31 address single or multiple components listed for study under this
32 section.

33 (10) All research commissioned under this section must be completed
34 and the results reported to the appropriate committees of the
35 legislature by December 1, 2013. In addition, the sea grant program
36 shall provide the appropriate committees of the legislature with annual
37 reports updating the status and progress of the ongoing studies that
38 are completed in advance of the 2013 deadline.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 28B.20 RCW
2 to read as follows:

3 The geoduck aquaculture research account is created in the custody
4 of the state treasurer. All receipts from any legislative
5 appropriations, the aquaculture industry, or any other private or
6 public source directed to the account must be deposited in the account.
7 Expenditures from the account may only be used by the sea grant program
8 for the geoduck research projects identified by section 1 of this act.
9 Only the president of the University of Washington or the president's
10 designee may authorize expenditures from the account. The account is
11 subject to the allotment procedures under chapter 43.88 RCW, but an
12 appropriation is not required for expenditures.

13 **Sec. 3.** RCW 79.135.100 and 1984 c 221 s 10 are each amended to
14 read as follows:

15 (1) If state-owned aquatic lands are used for aquaculture
16 production or harvesting, rents and fees shall be established through
17 competitive bidding or negotiation.

18 (2) After an initial twenty-three acres are leased, the department
19 is prohibited from offering leases that would permit the intertidal
20 commercial aquaculture of geoducks on more than fifteen acres of state-
21 owned aquatic lands a year until December 1, 2014.

22 (3) Any intertidal leases entered into by the department for
23 geoduck aquaculture must be conditioned in such a way that the
24 department can engage in monitoring of the environmental impacts of the
25 lease's execution, without unreasonably diminishing the economic
26 viability of the lease, and that the lease tracts are eligible to be
27 made part of the studies conducted under section 1 of this act.

28 (4) The department must notify all abutting landowners and any
29 landowner within three hundred feet of the lands to be leased of the
30 intent of the department to lease any intertidal lands for the purposes
31 of geoduck aquaculture.

32 NEW SECTION. **Sec. 4.** (1) The shellfish aquaculture regulatory
33 committee is established to, consistent with this section, serve as an
34 advisory body to the department of ecology on regulatory processes and
35 approvals for all current and new shellfish aquaculture activities, and
36 the activities conducted pursuant to RCW 90.58.060, as the activities

1 relate to shellfish. The shellfish aquaculture regulatory committee is
2 advisory in nature, and no vote or action of the committee may overrule
3 existing statutes, regulations, or local ordinances.

4 (2) The shellfish aquaculture regulatory committee shall develop
5 recommendations as to:

6 (a) A regulatory system or permit process for all current and new
7 shellfish aquaculture projects and activities that integrates all
8 applicable existing local, state, and federal regulations and is
9 efficient both for the regulators and the regulated; and

10 (b) Appropriate guidelines for geoduck aquaculture operations to be
11 included in shoreline master programs under section 5 of this act.
12 When developing the recommendations for guidelines under this
13 subsection, the committee must examine the following:

14 (i) Methods for quantifying and reducing marine litter; and

15 (ii) Possible landowner notification policies and requirements for
16 establishing new geoduck aquaculture farms.

17 (3)(a) The members of the shellfish aquaculture regulatory
18 committee shall be appointed by the director of the department of
19 ecology as follows:

20 (i) Two representatives of county government, one from a county
21 located on the Puget Sound, and one from a county located on the
22 Pacific Ocean;

23 (ii) Two individuals who are professionally engaged in the
24 commercial aquaculture of shellfish, one who owns or operates an
25 aquatic farm in Puget Sound, and one who owns or operates an aquatic
26 farm in state waters other than the Puget Sound;

27 (iii) Two representatives of organizations representing the
28 environmental community;

29 (iv) Two individuals who own shoreline property, one of which does
30 not have a commercial geoduck operation on his or her property and one
31 of which who does have a commercial geoduck operation on his or her
32 property; and

33 (v) One representative each from the following state agencies: The
34 department of ecology, the department of fish and wildlife, the
35 department of agriculture, and the department of natural resources.

36 (b) In addition to the other participants listed in this
37 subsection, the governor shall invite the full participation of two

1 tribal governments, at least one of which is located within the
2 drainage of the Puget Sound.

3 (4) The department of ecology shall provide administrative and
4 clerical assistance to the shellfish aquaculture regulatory committee
5 and all agencies listed in subsection (3) of this section shall provide
6 technical assistance.

7 (5) Nonagency members of the shellfish aquaculture regulatory
8 committee will not be compensated, but are entitled to be reimbursed
9 for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

10 (6) Any participation by a Native American tribe on the shellfish
11 aquaculture regulatory committee shall not, under any circumstances, be
12 viewed as an admission by the tribe that any of its activities, or
13 those of its members, are subject to any of the statutes, regulations,
14 ordinances, standards, or permit systems reviewed, considered, or
15 proposed by the committee.

16 (7) The shellfish aquaculture regulatory committee is authorized to
17 form technical advisory panels as needed and appoint to them members
18 not on the shellfish aquaculture regulatory committee.

19 (8) The department of ecology shall report the recommendations and
20 findings of the shellfish aquaculture regulatory committee to the
21 appropriate committees of the legislature by December 1, 2007, with a
22 further report, if necessary, by December 1, 2008.

23 NEW SECTION. **Sec. 5.** (1) The department of ecology shall develop,
24 by rule, guidelines for the appropriate siting and operation of geoduck
25 aquaculture operations to be included in any master program under this
26 section. The guidelines adopted under this section must be prepared
27 with the advice of the shellfish aquaculture regulatory committee
28 created in section 4 of this act, which shall serve as the advisory
29 committee for the development of the guidelines.

30 (2) The guidelines required under this section must be filed for
31 public review and comment no later than six months after the delivery
32 of the final report by the shellfish aquaculture regulatory committee
33 created in section 4 of this act.

34 (3) The department of ecology shall update the guidelines required
35 under this section, as necessary, after the completion of the geoduck
36 research by the sea grant program at the University of Washington
37 required under section 1 of this act.

1 **Sec. 6.** RCW 77.115.040 and 1993 sp.s. c 2 s 58 are each amended to
2 read as follows:

3 (1) All aquatic farmers, as defined in RCW 15.85.020, shall
4 register with the department. The director shall assign each aquatic
5 farm a unique registration number and develop and maintain in an
6 electronic database a registration list of all aquaculture farms. The
7 department shall establish procedures to annually update the aquatic
8 farmer information contained in the registration list. The department
9 shall coordinate with the department of health using shellfish growing
10 area certification data when updating the registration list.

11 (2) Registered aquaculture farms shall provide the department
12 ((production statistical data)) with the following information:

13 (a) The name of the aquatic farmer;

14 (b) The address of the aquatic farmer;

15 (c) Contact information such as telephone, fax, web site, and email
16 address, if available;

17 (d) The number and location of acres under cultivation, including
18 a map displaying the location of the cultivated acres;

19 (e) The name of the landowner of the property being cultivated or
20 otherwise used in the aquatic farming operation;

21 (f) The private sector cultured aquatic product being propagated,
22 farmed, or cultivated; and

23 (g) Statistical production data.

24 (3) The state veterinarian shall be provided with registration and
25 statistical data by the department.

Passed by the House April 20, 2007.

Passed by the Senate April 20, 2007.

Approved by the Governor April 27, 2007.

Filed in Office of Secretary of State April 30, 2007.

EXHIBIT 17

HOUSE BILL REPORT

2SHB 2220

As Passed Legislature

Title: An act relating to shellfish.

Brief Description: Regarding shellfish.

Sponsors: By House Committee on Appropriations (originally sponsored by Representative Lantz).

Brief History:

Committee Activity:

Select Committee on Puget Sound: 2/27/07 [DPS];
Appropriations: 3/3/07 [DP2S(w/o sub PUGT)].

Floor Activity:

Passed House: 3/10/07, 88-9.
Senate Amended.
Passed Senate: 4/12/07, 37-11.
House Refuses to Concur.
Senate Amended.
Passed Senate: 4/20/07, 45-1.
House Concurred.
Passed House: 4/20/07, 98-0.
Passed Legislature.

Brief Summary of Second Substitute Bill

- Directs the Sea Grant Program at the University of Washington to review existing research on the potential effects of geoduck aquaculture on the environment.
- Creates the Geoduck Aquaculture Research Account.
- Forms the Shellfish Aquaculture Regulatory Committee.
- Directs the Department of Ecology to develop, by rule, guidelines for the appropriate siting and operation of geoduck aquaculture operations that are to be included in any master programs.

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.

- Expands the shellfish registration program at the Department of Fish and Wildlife.

HOUSE SELECT COMMITTEE ON PUGET SOUND

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Upthegrove, Chair; Eickmeyer, Vice Chair; Rolfes, Vice Chair; Sump, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; O'Brien, Pearson and Springer.

Staff: Jason Callahan (786-7117).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Select Committee on Puget Sound. Signed by 27 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Cody, Conway, Darneille, Ericks, Fromhold, Grant, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McDonald, McIntire, Morrell, Pettigrew, Priest, Schual-Berke, Seaquist, P. Sullivan and Walsh.

Minority Report: Do not pass. Signed by 7 members: Representatives Alexander, Ranking Minority Member; Anderson, Buri, Chandler, Dunn, Hinkle and Kretz.

Staff: Alicia Dunkin (786-7178).

Background:

Shorelines Management Act

Under the Shorelines Management Act, certain developments that occur on or near the shorelines of the state are required to be permitted. Permitting for most development is administered at the county level, with standards and requirements outlined in the county's master program. Each county with shorelines within its jurisdiction adopts its own master program, which is a comprehensive use plan for the area. Once a master program is approved by the Department of Ecology (DOE), the county is the entity responsible for final approval of all programs falling within the plan's scope.

Geoduck Aquaculture on State-Owned Aquatic Lands

The Legislature has assigned to the Department of Natural Resources (DNR) the responsibility for managing the state's aquatic lands for the benefit of the public. The DNR manages over two million acres of tidelands, shorelands, and bedlands. This includes the beds of all navigable rivers and lakes, along with the beds below the Puget Sound.

The management of aquatic lands must support a balance of goals, including the encouragement of public access, the fostering of water-dependent uses, the utilization of renewable resources, and the generation of revenue. Revenues generated from the state's aquatic lands are generally directed to be used for public benefits, such as shoreline access, environmental protection, and recreational opportunities. Under current law, the DNR may lease aquatic lands, exchange state-owned aquatic lands for privately owned lands, and lease aquatic lands for shellfish aquaculture.

In 2003, the Legislature directed the DNR to conduct a study looking into the feasibility of leasing state-owned aquatic lands for geoduck aquaculture. The DNR has initiated a fledgling geoduck aquaculture program and has plans to lease 25 acres of state-owned aquatic lands per year for the next 10 years for geoduck aquaculture.

Aquaculture Registration

All aquatic farmers are required to register with the Department of Fish and Wildlife (WDFW) and provide the WDFW with data about the production on the aquatic farms. The registration information must be maintained by the WDFW.

Summary of Second Substitute Bill:

Geoduck Research

The Sea Grant Program at the University of Washington (Sea Grant) is directed to review existing research on the potential effects of geoduck aquaculture on the environment, and commission new research as necessary. A list of required study elements is provided to the Sea Grant, which includes studies evaluating the structures used in geoduck aquaculture, the effects of harvesting techniques, how aquaculture impacts natural ecological characteristics, and research into the genetic interactions between farm-raised and naturally occurring geoduck. The Sea Grant, with consultation with an oversight committee, may prioritize the listed studies and add or subtract to the listed studies as necessary.

The Geoduck Aquaculture Research Account (Account) is created to fund the required research to accept legislative appropriations and private donations. Any institution involved in research funded from the Account may not retain more than 15 percent of any funding for administrative overhead.

The final report of the research must be delivered the Legislature by December 1, 2013. However, the Sea Grant is directed to prioritize the studies and report the results of shorter timeline studies prior to 2013.

Department of Natural Resources

The DNR is prohibited from entering into any new leases that would permit the commercial aquaculture of geoducks on state-owned intertidal lands on more than 15 acres a year until December 2014, exclusive of the first 23 acres leased. Any intertidal leases must be conditioned so that the DNR can conduct environmental monitoring on the geoduck operation and so that the leases can be used as part of the research conducted by the Sea Grant. In

addition, the DNR must provide notification to adjacent landowners of any aquatic lands that are to be leased for geoduck aquaculture.

Shellfish Aquaculture Regulatory Committee

The Shellfish Aquaculture Regulatory Committee (Committee) is formed to serve as the oversight committee for the research conducted by the Sea Grant, develop recommendations for a regulatory system or permit process that integrates local, state, and federal regulations, and develop recommendations for appropriate guidelines for the DOE to include in shorelines master program guidelines. The Committee must also consider landowner notification policies and methods for quantifying and reducing marine litter.

The members of the Committee are to be appointed by the director of the DOE, and includes state agency representatives, tribal invitees, members of the environmental community, shellfish growers, and property owners.

Initial recommendations from the Committee must be delivered in 2007.

Shorelines Guidelines

The DOE is directed to develop, by rule, guidelines for the appropriate siting and operation of geoduck aquaculture operations that are to be included in any master program. The guidelines must be developed in consultation with the Committee, with the public review and comment period commencing no longer than six months after the Committee delivers its recommendations.

If necessary, the DOE is directed to update the guidelines after the culmination of the research required of the Sea Grant.

Aquaculture Registration

The aquaculture registration program at the WDFW is expanded. Each registered aquatic farmer must be assigned a unique registration number and the information collected must be tracked in an electronic database. The information that must be collected from aquatic farmers includes identification information, contact information, information about the size and location of the land being cultivated, and the shellfish species being grown.

The WDFW must coordinate with the Department of Health and update the registration list annually.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony: (Select Committee on Puget Sound)

(In support) There is a perfect storm of property rights, environmental protection, and economic development involved in geoduck aquaculture. This bill is a product of a negotiation process whereby consensus was reached, but total support from either side was not secured. A win-win outcome is possible if the bill is fully funded. The bill set forth a path that will allow everyone to live together. Compromise is required in the legislative process.

It is important to recognize the nexus between new methods of commercially harvesting geoducks in the intertidal zone and the values stated in the Shorelines Management Act in favor of balancing competing interests. The knowledge gained from the research and the work of the Committee will be instructive to state and local government policy makers as they try to strike that balance.

There are no mandates or assumed outcomes in the bill, and each county will still retain the flexibility to make local decisions. The processes in the bill helps with difficulties existing in the current system of regulations.

Good science is an important foundation of regulations. The DNR is already engaged in some monitoring that will assist with the Sea Grant's research. Research must be credible and useful.

(Opposed) Geoduck aquaculture on state-owned aquatic lands should be prohibited until the results of the Sea Grant's research are reported. The costs of this bill are not funded in the Governor's budget.

Staff Summary of Public Testimony: (Appropriations)

None.

Persons Testifying: (Select Committee on Puget Sound) (In support) Representative Lantz, prime sponsor; Jim Jesernig, Pacific Coast Shellfish Growers Association; Rich Doenges, Department of Natural Resources; Laurie Brauneis, Save Our Shoreline; John Vanick; Kurt Sheafe, Washington REALTORS®; and Tom Clingman, Department of Ecology.

(Opposed) Patrick Townsend, Protect Our Shoreline.

Persons Testifying: (Appropriations) None.

Persons Signed In To Testify But Not Testifying: (Select Committee on Puget Sound) Bruce Wishart, People for Puget Sound.

Persons Signed In To Testify But Not Testifying: (Appropriations) None.

ANIMAL & EARTH ADVOCATES

September 16, 2019 - 4:52 PM

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