

CHAPTER 179, Laws of 2018

[Engrossed House Bill 2957]

NONNATIVE FINFISH--MARINE AQUACULTURE—ESCAPE

AN ACT Relating to reducing escape of nonnative finfish from marine finfish aquaculture facilities; amending RCW 77.115.010, 77.115.030, 77.115.040, 77.125.030, 77.12.047, and 50.04.075; adding a new section to chapter 79.105 RCW; adding new sections to chapter 77.125 RCW; adding a new section to chapter 90.48 RCW; creating new sections; and providing an expiration date.

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

**NEW SECTION. Sec. 1. Recent developments have thrown into stark relief the threat that nonnative marine finfish aquaculture may pose to Washington's native salmon populations. But just as evidence has emerged that nonnative marine finfish aquaculture may endanger Washington's native salmon populations, so too has evidence emerged that marine finfish aquaculture in general may pose unacceptable risks not only to Washington's native salmon populations but also to the broader health of Washington's marine environment. Given this evidence, the legislature intends to phase out nonnative finfish aquaculture in Washington's marine waters. Because the state of the science and engineering with regard to marine finfish aquaculture may be evolving, the legislature further intends to study this issue in greater depth, and to revisit the issue of marine finfish aquaculture once additional research becomes available.*

**Sec. 1 was vetoed. See message at end of chapter.*

NEW SECTION. **Sec. 2.** A new section is added to chapter 79.105 RCW to read as follows:

(1) The department may not allow nonnative marine finfish aquaculture as an authorized use under any new lease or other use authorization.

(2) The department may not renew or extend a lease or other use authorization in existence on the effective date of this section where the use includes nonnative marine finfish aquaculture.

NEW SECTION. **Sec. 3.** A new section is added to chapter 77.125 RCW to read as follows:

(1) The department may authorize or permit activities associated with the use of marine net pens for nonnative marine finfish aquaculture only if these activities are performed under a lease of state-owned aquatic lands in effect on the effective date of this section. The department may not authorize or permit any of these activities or operations after the expiration date of the relevant lease of state-owned aquatic lands in effect on the effective date of this section.

(2) For purposes of this section, "state-owned aquatic lands" has the same meaning as defined in RCW 79.105.060.

NEW SECTION. **Sec. 4.** A new section is added to chapter 90.48 RCW to read as follows:

(1) The department may issue national pollutant discharge elimination system permits associated with nonnative marine finfish aquaculture only if these activities are performed under a lease of state-owned aquatic lands in effect on the effective date of this section. The department may not issue national pollutant discharge elimination system permits in connection with any of these activities or operations after the expiration date of the relevant lease of state-owned aquatic lands in effect on the effective date of this section.

(2) For purposes of this section, "state-owned aquatic lands" has the same meaning as defined in RCW 79.105.060.

NEW SECTION. **Sec. 5.** (1) The departments of ecology, agriculture, and fish and wildlife, as well as the department of natural resources, shall continue the existing effort to update guidance and informational resources to industry and governments for planning and permitting commercial marine net pen aquaculture. As part of this effort, the departments shall seek advice and technical assistance from the Northwest Indian fisheries commission, and the national centers for coastal ocean science, and shall invite consultation and participation from the University of Washington School of aquatic and fishery sciences, Western Washington University, Washington State University, Northwest Indian College, and

additional authorities, as appropriate, including federally recognized Indian tribes. The guidance must be designed to eliminate commercial marine net pen escapement and to eliminate negative impacts to water quality and native fish, shellfish, and wildlife. At a minimum, the guidance must address the following topics:

- (a) Local shoreline permitting;
- (b) Water quality;
- (c) The state of the science concerning marine finfish aquaculture impacts on native fish, shellfish, and wildlife;
- (d) Best management practices for the safe and effective operation of finfish aquaculture in the marine environment;
- (e) Interagency coordination in permitting, inspections, and enforcement; and
- (f) Recommendations for future legislative oversight of marine finfish net pen aquaculture.

(2) The departments must report to the legislature, consistent with RCW 43.01.036, by November 1, 2019.

(3) This section expires June 30, 2020.

Sec. 6. RCW 77.115.010 and 2000 c 107 s 122 are each amended to read as follows:

(1) The director of agriculture and the director shall jointly develop a program of disease inspection and control for aquatic farmers as defined in RCW 15.85.020. The program shall be administered by the department under rules established under this section. The purpose of the program is to protect the aquaculture industry and wildstock fisheries from a loss of productivity due to aquatic diseases or maladies. As used in this section "diseases" means, in addition to its ordinary meaning, infestations of parasites or pests. The disease program may include, but is not limited to, the following elements:

- (a) Disease diagnosis;
- (b) Import and transfer requirements;
- (c) Provision for certification of stocks;
- (d) Classification of diseases by severity;
- (e) Provision for treatment of selected high-risk diseases;
- (f) Provision for containment and eradication of high-risk diseases;
- (g) Provision for destruction of diseased cultured aquatic products;
- (h) Provision for quarantine of diseased cultured aquatic products;
- (i) Provision for coordination with state and federal agencies;
- (j) Provision for development of preventative or control measures;
- (k) Provision for cooperative consultation service to aquatic farmers; and
- (l) Provision for disease history records.

(2) The commission shall adopt rules implementing this section. However, such rules shall have the prior approval of the director of agriculture and shall provide therein that the director of agriculture has provided such approval. The director of agriculture or the director's designee shall attend the rule-making hearings conducted under chapter 34.05 RCW and shall assist in conducting those hearings. The authorities granted the department by these rules and by RCW 77.12.047(1)(g), 77.60.060, 77.60.080, 77.65.210, ((77.115.020,)) 77.115.030, and 77.115.040 constitute the only authorities of the department to regulate private sector cultured aquatic products and aquatic farmers as defined in RCW 15.85.020. Except as provided in subsection (3) of this section, no action may be taken against any person to enforce these rules unless the department has first provided the person an opportunity for a hearing. In such a case, if the hearing is requested, no enforcement action may be taken before the conclusion of that hearing.

(3) The rules adopted under this section shall specify the emergency enforcement actions that may be taken by the department, and the circumstances under which they may be taken, without first providing the affected party with an opportunity for a hearing. Neither the provisions of this subsection nor the provisions of subsection (2) of this section shall preclude the department from requesting the initiation of criminal proceedings for violations of the disease inspection and control rules.

(4) A person shall not violate the rules adopted under subsection (2) or (3) of this section or violate RCW 77.115.040.

(5) In administering the program established under this section, the department shall use the services of a pathologist licensed to practice veterinary medicine.

(6) The director in administering the program shall not place constraints on or take enforcement actions in respect to the aquaculture industry that are more rigorous than those placed on the department or other fish-rearing entities.

(7) The department must implement this section consistent with section 3 of this act.

Sec. 7. RCW 77.115.030 and 2000 c 107 s 124 are each amended to read as follows:

(1) The director shall consult regarding the disease inspection and control program established under RCW 77.115.010 with federal agencies and Indian tribes to assure protection of state, federal, and tribal aquatic resources and to protect private sector cultured aquatic products from disease that could originate from waters or facilities managed by those agencies.

(2) With regard to the program, the director may enter into contracts or interagency agreements for diagnostic field services with government agencies and institutions of higher education and private industry.

(3) The director shall provide for the creation and distribution of a roster of biologists having a specialty in the diagnosis or treatment of diseases of fish or shellfish. The director shall adopt rules specifying the qualifications which a person must have in order to be placed on the roster.

(4) The department must implement this section consistent with section 3 of this act.

Sec. 8. RCW 77.115.040 and 2011 c 339 s 37 are each amended to read as follows:

(1) All aquatic farmers, as defined in RCW 15.85.020, shall register with the department. The application fee is one hundred five dollars. The director shall assign each aquatic farm a unique registration number and develop and maintain in an electronic database a registration list of all aquaculture farms. The department shall establish procedures to annually update the aquatic farmer information contained in the registration list. The department shall coordinate with the department of health using shellfish growing area certification data when updating the registration list.

(2) Registered aquaculture farms shall provide the department with the following information:

- (a) The name of the aquatic farmer;
- (b) The address of the aquatic farmer;
- (c) Contact information such as telephone, fax, web site, and email address, if available;
- (d) The number and location of acres under cultivation, including a map displaying the location of the cultivated acres;
- (e) The name of the landowner of the property being cultivated or otherwise used in the aquatic farming operation;
- (f) The private sector cultured aquatic product being propagated, farmed, or cultivated; and
- (g) Statistical production data.

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

(4) The department must implement this section consistent with section 3 of this act.

Sec. 9. RCW 77.125.030 and 2001 c 86 s 3 are each amended to read as follows:

The director, in cooperation with the marine finfish aquatic farmers, shall develop proposed rules for the implementation, administration, and enforcement of marine finfish aquaculture programs. In developing such proposed rules, the director must use a negotiated rule-making process pursuant to RCW 34.05.310.

The proposed rules shall be submitted to the appropriate legislative committees by January 1, 2002, to allow for legislative review of the proposed rules. The proposed rules shall include the following elements:

- (1) Provisions for the prevention of escapes of cultured marine finfish aquaculture products from enclosures, net pens, or other rearing vessels;
- (2) Provisions for the development and implementation of management plans to facilitate the most rapid recapture of live marine finfish aquaculture products that have escaped from enclosures, net pens, or other rearing vessels, and to prevent the spread or permanent escape of these products;
- (3) Provisions for the development of management practices based on the latest available science, to include:
 - (a) Procedures for inspections of marine aquatic farming locations on a regular basis to determine conformity with law and the rules of the department relating to the operation of marine aquatic farming locations; and
 - (b) Operating procedures at marine aquatic farming locations to prevent the escape of marine finfish, to include the use of net antifoulants;
- (4) Provisions for the eradication of those cultured marine finfish aquaculture products that have escaped from enclosures, net pens, or other rearing vessels found spawning in state waters;
- (5) Provisions for the determination of appropriate species, stocks, and races of marine finfish aquaculture products allowed to be cultured at specific locations and sites;
- (6) Provisions for the development of an Atlantic salmon watch program similar to the one in operation in British Columbia, Canada. The program must provide for the monitoring of escapes of Atlantic salmon from marine aquatic farming locations, monitor the occurrence of naturally produced Atlantic salmon, determine the impact of Atlantic salmon on naturally produced and cultured finfish stocks, provide a focal point for consolidation of scientific information, and provide a forum for interaction and education of the public; and
- (7) Provisions for the development of an education program to assist marine aquatic farmers so that they operate in an environmentally sound manner.
- (8) The department must implement this section consistent with section 3 of this act.

Sec. 10. RCW 77.12.047 and 2017 c 159 s 2 are each amended to read as follows:

- (1) The commission may adopt, amend, or repeal rules as follows:
 - (a) Specifying the times when the taking of wildlife, fish, or shellfish is lawful or unlawful.
 - (b) Specifying the areas and waters in which the taking and possession of wildlife, fish, or shellfish is lawful or unlawful.
 - (c) Specifying and defining the gear, appliances, or other equipment and methods that may be used to take wildlife, fish, or shellfish, and specifying the times, places, and manner in which the equipment may be used or possessed.
 - (d) Regulating the importation, transportation, possession, disposal, landing, and sale of wildlife, fish, shellfish, or seaweed within the state, whether acquired within or without the state. However, this authority must be exercised consistent with sections 3 and 12 of this act. Additionally, the rules of the department must prohibit any person, including department staff, from translocating a live elk from an area with elk affected by hoof disease to any other location except:
 - (i) Consistent with a process developed by the department with input from the affected federally recognized tribes for translocation for monitoring or hoof disease management purposes; or
 - (ii) Within an elk herd management plan area affected by hoof disease.
 - (e) Regulating the prevention and suppression of diseases and pests affecting wildlife, fish, or shellfish.
 - (f) Regulating the size, sex, species, and quantities of wildlife, fish, or shellfish that may be taken, possessed, sold, or disposed of.
 - (g) Specifying the statistical and biological reports required from fishers, dealers, boathouses, or processors of wildlife, fish, or shellfish.

- (h) Classifying species of marine and freshwater life as food fish or shellfish.
- (i) Classifying the species of wildlife, fish, and shellfish that may be used for purposes other than human consumption.
- (j) Regulating the taking, sale, possession, and distribution of wildlife, fish, shellfish, or deleterious exotic wildlife.
- (k) Establishing game reserves and closed areas where hunting for wild animals or wild birds may be prohibited.
- (l) Regulating the harvesting of fish, shellfish, and wildlife in the federal exclusive economic zone by vessels or individuals registered or licensed under the laws of this state.
- (m) Authorizing issuance of permits to release, plant, or place fish or shellfish in state waters.
- (n) Governing the possession of fish, shellfish, or wildlife so that the size, species, or sex can be determined visually in the field or while being transported.
- (o) Other rules necessary to carry out this title and the purposes and duties of the department.

(2)(a) Subsections (1)(a), (b), (c), (d), and (f) of this section do not apply to private tideland owners and lessees and the immediate family members of the owners or lessees of state tidelands, when they take or possess oysters, clams, cockles, borers, or mussels, excluding razor clams, produced on their own private tidelands or their leased state tidelands for personal use.

(b) "Immediate family member" for the purposes of this section means a spouse, brother, sister, grandparent, parent, child, or grandchild.

(3) Except for subsection (1)(g) of this section, this section does not apply to private sector cultured aquatic products as defined in RCW 15.85.020.

Subsection (1)(g) of this section does apply to such products.

Sec. 11. RCW 50.04.075 and 2011 c 4 s 12 are each amended to read as follows:

(1) With respect to claims with an effective date prior to July 1, 2012, "dislocated worker" means any individual who:

- (a) Has been terminated or received a notice of termination from employment;
- (b) Is eligible for or has exhausted entitlement to unemployment compensation benefits; and
- (c) Is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for their skills in that occupation or industry.

(2) With respect to claims with an effective date on or after July 1, 2012, "dislocated worker" means any individual who:

- (a) Has been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment, ((or)) has separated from a declining occupation, or has separated from employment as a result of this act; and
- (b) Is eligible for or has exhausted entitlement to unemployment compensation benefits.

NEW SECTION. Sec. 12. A new section is added to chapter 77.125 RCW to read as follows:

(1) For marine finfish aquaculture, the facility operator must hire, at their own expense, a marine engineering firm approved by the department to conduct inspections. Inspections must occur approximately every two years, when net pens are fallow, and must include topside and mooring assessments related to escapement potential, structural integrity, permit compliance, and operations.

(2) Any net pen facility must be found to be in good working order to receive fish.

(3) If the facility is found to be in imminent danger of collapse or release of finfish, the director may require the operator to remove fish or deny a fish transfer permit.

Passed by the House February 14, 2018.

Passed by the Senate March 2, 2018.

Approved by the Governor March 22, 2018, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 26, 2018.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 1, Engrossed House Bill No. 2957 entitled:

"AN ACT Relating to reducing escape of nonnative finfish from marine finfish aquaculture facilities."

Section 1 is unnecessary to implement the bill and I do not agree with all the assertions made in this section.

For these reasons I have vetoed Section 1 of Engrossed House Bill No. 2957.

With the exception of Section 1, Engrossed House Bill No. 2957 is approved."