

(2) Section 10, chapter 212, Laws of 1955, section 126, chapter 46, Laws of 1983 1st ex. sess. and RCW 75.28.282.

Passed the Senate April 16, 1985.

Passed the House April 9, 1985.

Approved by the Governor May 21, 1985, with the exception of certain items which are vetoed.

Filed in Office of Secretary of State May 21, 1985.

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

"I am returning herewith, without my approval as to several portions, Substitute Senate Bill No. 3067, entitled:

"AN ACT Relating to aquatic farming."

Section 6 would create an aquaculture advisory council appointed by the Governor. I wholeheartedly support the purpose of the council, which will bring together private interests with the state agencies responsible for aquaculture promotion and regulation. This cooperation is essential to a successful program. However, the council should more appropriately be appointed by and report to the Director of the Department of Agriculture, who has the prime responsibility for promotion under the Act. The Director has authority under existing statute to appoint such an advisory body. The Director should consult the Departments of Fisheries and Natural Resources in making appointments.

Section 8(7) would provide treble damages in civil actions by aquatic farmers in cases where Department of Fisheries' orders for the destruction of aquatic products are held to be unreasonable. Treble damages against the state are without precedent and are, I believe, excessive and unnecessary. However, removing this provision in no way suggests that the Department should not be accountable for its actions. When the Department has committed an unreasonable act, the courts should continue, as under current law, to award actual and consequential damages.

Section 26(2) would require the Department of Fisheries to survey the boundaries of the state's Puget Sound oyster reserves, assess their ability to support aquaculture, and report to the legislature regarding their optimum use. The Department of Fisheries reports that the surveys required by this subsection would cost more than \$500,000, for which no funding has been provided. In recognition of the need to enhance Puget Sound oyster reserves, I have signed into law Substitute Senate Bill No. 4041. This requires that Fisheries categorize the reserves according to their best uses. It further requires that Fisheries undertake a pilot Olympia oyster cultivation project.

With the exception of Sections 6, 8(7) and 26(2), which I have vetoed, Substitute Senate Bill No. 3067 is approved."

CHAPTER 458

[Substitute Senate Bill No. 3384]

SALMON ENHANCEMENT

AN ACT Relating to salmon enhancement; amending RCW 75.08.065, 75.48.120, and 77.12.420; adding a new chapter to Title 75 RCW; prescribing penalties; making an appropriation; and declaring an emergency.

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

NEW SECTION. Sec. 1. Currently, many of the salmon stocks of Washington state are critically reduced from their sustainable level. The best interests of all fishing groups and the citizens as a whole are served by

a stable and productive salmon resource. Immediate action is needed to reverse the severe decline of the resource and to insure its very survival. The legislature finds a state of emergency exists and that immediate action is required to restore its fishery.

Disagreement and strife have dominated the salmon fisheries for many years. Conflicts among the various fishing interests have only served to erode the resource. It is time for the state of Washington to make a major commitment to increasing productivity of the resource and to move forward with an effective rehabilitation and enhancement program. The department of fisheries is directed to dedicate its efforts to make increasing the productivity of the salmon resource a first priority and to seek resolution to the many conflicts that involve the resource.

Success of the enhancement program can only occur if projects efficiently produce salmon or restore habitat. The expectation of the program is to optimize the efficient use of funding on projects that will increase artificially and naturally produced salmon, restore and improve habitat, or identify ways to increase the survival of salmon. The full utilization of state resources and cooperative efforts with interested groups are essential to the success of the program.

NEW SECTION. Sec. 2. (1) The director shall develop long-term regional policy statements regarding the salmon fishery resources before December 1, 1985. The director shall consider the following in formulating and updating regional policy statements:

- (a) Existing resource needs;
- (b) Potential for creation of new resources;
- (c) Successful existing programs, both within and outside the state;
- (d) Balanced utilization of natural and hatchery production;
- (e) Desires of the fishing interest;
- (f) Need for additional data or research;
- (g) Federal court orders; and
- (h) Salmon advisory council recommendations.

(2) The director shall review and update each policy statement at least once each year.

NEW SECTION. Sec. 3. (1) The director shall develop a detailed salmon enhancement plan with proposed enhancement projects. The plan and the regional policy statements shall be submitted to the secretary of the senate and chief clerk of the house of representatives for legislative distribution by June 30, 1986. The enhancement plan and regional policy statements shall be provided by June 30, 1986, to the natural resources committees of the house of representatives and the senate. The director shall provide a maximum opportunity for the public to participate in the development of the salmon enhancement plan. To insure full participation by all interested parties, the director shall solicit and consider enhancement

project proposals from Indian tribes, sports fishermen, commercial fishermen, private aquaculturists, and other interested groups or individuals for potential inclusion in the salmon enhancement plan. Joint or cooperative enhancement projects shall be considered for funding.

(2) The following criteria shall be used by the director in formulating the project proposals:

(a) Compatibility with the long-term policy statement;

(b) Benefit/cost analysis;

(c) Needs of all fishing interests;

(d) Compatibility with regional plans, including harvest management plans;

(e) Likely increase in resource productivity;

(f) Direct applicability of any research;

(g) Salmon advisory council recommendations;

(h) Compatibility with federal court orders;

(i) Coordination with the salmon and steelhead advisory commission program;

(j) Economic impact to the state;

(k) Technical feasibility; and

(l) Preservation of native salmon runs.

(3) The director shall not approve projects that serve as replacement funding for projects that exist prior to the effective date of this act, unless no other sources of funds are available.

(4) The director shall prioritize various projects and establish a recommended implementation time schedule.

NEW SECTION. Sec. 4. Upon approval by the legislature of funds for its implementation, the director shall monitor the progress of projects detailed in the salmon enhancement plan.

The director shall be responsible for establishing criteria which shall be used to measure the success of each project in the salmon enhancement plan.

NEW SECTION. Sec. 5. The director shall report to the legislature on or before October 30th of each year on the progress and performance of each project. The report shall contain an analysis of the successes and failures of the program to enable optimum development of the program. The report shall include estimates of funding levels necessary to operate the projects in future years.

The director shall submit the reports and any additional recommendations to the committees on ways and means and the committees on natural resources of the senate and house of representatives.

NEW SECTION. Sec. 6. As used in this chapter, "enhancement project" means salmon propagation activities including, but not limited to, hatcheries, spawning channels, rearing ponds, egg boxes, fishways, fish

screens, stream bed clearing, erosion control, habitat restoration, net pens, applied research projects, and any equipment, real property, or other interest necessary to the proper operation thereof.

Sec. 7. Section 75.16.070, chapter 12, Laws of 1955 as amended by section 13, chapter 46, Laws of 1983 1st ex. sess. and RCW 75.08.065 are each amended to read as follows:

(1) The director may enter into contracts and agreements with a person to secure food fish or shellfish or for the construction, operation, and maintenance of facilities for the propagation of food fish or shellfish.

(2) The director may enter into contracts and agreements to procure from private aquaculturists food fish or shellfish with which to stock state waters.

*Sec. 8. Section 2, chapter 327, Laws of 1977 ex. sess. as last amended by section 173, chapter 46, Laws of 1983 1st ex. sess. and RCW 75.48.120 are each amended to read as follows:

(1) The department shall not acquire, construct, or substantially improve a salmon enhancement facility unless the requirements of this section are met.

(a) The productivity of a salmon propagation facility is very dependent on water quantity and quality. Due to the limited number of water sources which meet the critical needs of a facility, it is imperative that these sources are acquired. Therefore, site acquisitions and preliminary design shall be considered by the department as generally having priority over project development.

(b) Prior to expending moneys for the construction and development of a particular salmon propagation facility, except for site acquisition and preliminary design, the department shall, with the advice of the advisory council created in subsection (2) of this section, give consideration to the following factors with respect to that facility:

(i) The department's management authority over propagated salmon;

(ii) The level of expected Canadian interception on the propagated salmon and whether this would be acceptable;

(iii) Whether an acceptable agreement has been reached on the status of treaty Indian salmon harvest; ~~(and)~~

(iv) Whether there can be a maximum harvest of propagated salmon with a tolerable impact on other salmonid stocks, both natural and artificial, and on their environment. The department shall consult on this matter with the department of game; and

(v) Compatibility with regional policy statements and the salmon enhancement plan under chapter 75.— RCW (sections 1 through 6 of this 1985 act).

(c) All facilities funded in full or in part by the salmon enhancement account shall operate at full production capacity. Facilities which drop below full production capacity shall be made available for volunteer cooperative

projects under chapter 75.52 RCW or on a contract basis for private salmon propagation solely to stock state waters. The salmon advisory council shall submit to the legislature by January 1, 1986, an evaluation of each facility funded by the 1977 salmon enhancement account, and a determination as to the full production capacity of each facility based on the objective of maximizing the number, pounds, quality, survival, and other pertinent factors affecting salmon smolt released.

(2) To aid and advise the department in the performance of its functions with regard to the salmon enhancement program, a salmon advisory council is created. The advisory council consists of ~~((thirteen))~~ six members appointed by the governor; four legislative ex officio nonvoting members, one appointed by each caucus in both the state senate and the house of representatives; and the director or his or her specifically appointed designee, who shall be the nonvoting chairman~~(; the director of the department of game, or the director's designee; one member of the senate to be appointed by the president of the senate, and one member of the house of representatives to be appointed by the speaker of the house of representatives. Of the members appointed by the governor, two shall represent troll fishermen; two shall represent gill net fishermen, of which one shall be from the Puget Sound area and one from the southwest Washington area; one shall represent purse seine fishermen; one shall represent owners of charter boats; three shall represent sportsmen; two shall be members of Indian tribes of this state who shall be appointed from a list submitted by the Northwest Indian Fisheries Commission; and two shall represent fish processors, of which one shall represent fresh or frozen fish processors and one shall represent canneries).~~ Of the members appointed by the governor, two shall represent non-Indian commercial fishermen, two shall represent sports fishermen, and two shall represent treaty Indian fishermen. Of the treaty Indian fishermen, one shall be selected from a list provided by the Washington state tribal coordinating body and one shall be selected from a list provided by the Columbia River tribal coordinating body defined in 16 U.S.C. 3302 (5) and (18).

All members appointed by the governor shall serve terms of two years. Vacancies shall be filled in the same manner as original appointments.

The advisory council shall be convened by the director prior to the decision to expend funds for construction and development of any salmon ~~((propagation facility))~~ enhancement project. The council shall advise the director with regard to the considerations listed in subsection (1)(b) of this section and other factors the council deems relevant with respect to the proposed facility. The council shall actively participate in the development of regional policy statements and the salmon enhancement plan.

~~((Except for the director of the department of game and legislative members;))~~ Members shall receive reimbursement through the department

of fisheries for travel expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060.

~~((The director of the department of game, or the director's designee, shall receive reimbursement through the department of game for travel expenses incurred in the performance of his or her duties in accordance with RCW 43.03.050 and 43.03.060. The legislative members shall be deemed engaged in legislative business while in attendance upon the business of the council and shall be limited to such allowances therefor as otherwise provided in RCW 44.04.120.))~~

The salmon advisory council shall cease to exist on December 31, 1989. This section expires on December 31, 1989.

*Sec. 8 was partially vetoed, see message at end of chapter.

***Sec. 9. Section 77.12.420, chapter 36, Laws of 1955 as amended by section 59, chapter 78, Laws of 1980 and RCW 77.12.420 are each amended to read as follows:**

The commission may spend moneys to improve natural growing conditions for fish by constructing fishways, installing screens, removing obstructions to migratory fish, and eradicating undesirable fish. Department hatcheries shall operate at full production capacity as determined by the commission in a formal policy statement based on maximizing the number, pounds, quality, survival, and other pertinent factors affecting fish released into state waters. Facilities which fall below full production capacity after January 1, 1986, shall be made available for volunteer cooperative projects under chapter 75.52 RCW, or for private fish propagation solely to stock state waters. The commission may enter into cooperative agreements with state, county, municipal, and federal agencies, and with private individuals for these purposes.

*Sec. 9 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 10. Thirty-nine thousand dollars, or so much thereof as may be necessary, is appropriated from the state general fund for the biennium ending June 30, 1987, to the department of fisheries for the purposes of this act.

NEW SECTION. Sec. 11. Sections 1 through 6 of this act shall constitute a new chapter in Title 75 RCW.

NEW SECTION. Sec. 12. 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.

NEW SECTION. Sec. 13. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state

government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 28, 1985.

Passed the House April 28, 1985.

Approved by the Governor May 21, 1985, with the exception of certain items which are vetoed.

Filed in Office of Secretary of State May 21, 1985.

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

"I am returning herewith, without my approval of two portions of Substitute Senate Bill No. 3384, entitled:

"AN ACT Relating to salmon enhancement."

The first two sentences of Section 8(1)(c) would require all facilities funded by the Salmon Enhancement Account to operate at full production capacity or be made available for volunteer cooperative projects to produce salmon for stocking state waters. This provision is apparently based on the idea that any hatchery not operated at full capacity is surplus. This is not the case. There are many good reasons for operating at less than full capacity, including disease control, water quantity and quality, and compliance with federal court orders.

The remainder of Section 8(1)(c) requires that the Salmon Advisory Council evaluate the operation of certain salmon hatcheries and report to the Legislature. I will request that the Council comply with this language.

Section 9 contains similar language relating to the Game Department. I am vetoing it for the same reasons.

With the exception of Sections 8(1)(c) and 9, Substitute Senate Bill No. 3384 is approved."

CHAPTER 459

[Engrossed Senate Bill No. 3400]

MINERAL EXPLORATION—LEASES—RENTAL—STATE MINE RESCUE PLAN—MINE RESCUE GOOD SAMARITAN LIABILITY

AN ACT Relating to the exploration and extraction of nonrenewable resources; amending RCW 79.01.668, 79.14.020, 79.14.030, 79.14.050, and 78.44.110; adding new sections to chapter 38.52 RCW; and adding new sections to chapter 43.12 RCW.

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

Sec. 1. Section 167, chapter 255, Laws of 1927 and RCW 79.01.668 are each amended to read as follows:

At any time during the life of the option contract, the holder thereof may apply to the commissioner of public lands for a coal mining lease of the lands included therein, or such portion thereof as he may specify, for the purpose of mining and extraction of coal therefrom. Such coal mining lease shall be for such term, not more than twenty years, and in such form as may be prescribed by the commissioner of public lands, shall entitle the lessee to mine and sell and dispose of all coal underlying said lands and to occupy and use so much of the surface thereof as may be necessary for bunkers and other outside works, and for railroads, buildings, appliances