

CHAPTER 141

[House Bill No. 781]

GEODUCK HARVESTING—LICENSING—LEASES—SAFETY STANDARDS

AN ACT Relating to shellfish; amending section 1, chapter 253, Laws of 1969 ex. sess. and RCW 75.24.100; amending section 6, chapter 309, Laws of 1959 as amended by section 6, chapter 283, Laws of 1971 ex. sess. and RCW 75.28.087; amending section 75.28.280, chapter 12, Laws of 1955 as last amended by section 3, chapter 253, Laws of 1969 ex. sess. and RCW 75.28.280; amending section 4, chapter 253, Laws of 1969 ex. sess. and RCW 75.28.287; adding new sections to chapter 75.28 RCW; adding a new section to chapter 79.01 RCW; prescribing penalties; and declaring an emergency.

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

Section 1. Section 1, chapter 253, Laws of 1969 ex. sess. and RCW 75.24.100 are each amended to read as follows:

(1) The director of fisheries may at his discretion and with the approval of the commissioner of public lands issue licenses for the harvesting of geoduck clams for commercial purposes from ~~((leased))~~ specific tracts of beds of navigable waters of the state of Washington for which harvest rights have been granted by the department of natural resources except that he may not authorize harvesting for commercial purposes on bottoms which are shallower than ~~((ten))~~ eighteen feet below mean lower low water (o.o. ft.), or which lie in an area bounded by the line of ordinary high tide (mean high tide) and a line ~~((one-quarter mile))~~ two hundred yards seaward from and parallel to said line of ordinary high tide. If the director shall determine that the numbers of units of gear are sufficient to harvest the known available crop and that additional units of gear might prove damaging to the resource or its habitat, he may suspend the issuance of such additional licenses for the balance of any given year or until he determines there is need for additional units of gear to achieve a sustained harvest. All harvesting shall be done with hand held, manually operated water jet or suction device guided and controlled from under water by scuba or other diver. The director shall also determine from time to time the effect of each type or unit of gear upon the geoduck population or the substrate they inhabit and he may require modification of the gear or cessation of its use if he determines that it is being operated in a wasteful or destructive manner or that its operation tends to cause permanent damage to the bottom or adjacent shellfish populations.

(2) Any person, including the person's agents or representatives, who is issued or currently holds a license under subsection (1) of this section shall comply with all applicable commercial diving safety standards and regulations promulgated and implemented by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists on the effective date of this act (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.). Violations of these safety

standards and regulations shall be deemed to be violations of this subsection: PROVIDED, That for the purposes of this section and section 8 of this 1979 act all persons who dive for geoducks are deemed to be "employees" as defined by the federal occupational safety and health act. Violations of this subsection are grounds for suspension or cancellation of the license upon ten days written notice to the licensee and following a hearing on the matter. In no event shall a license be suspended or canceled if the violation has been corrected within ten days. If there is a substantial probability that a particular violation of the commercial diving standards could result in death or serious physical harm to any person engaged in harvesting geoduck clams, the license shall be suspended immediately until the violation causing the probability of death or serious physical harm has been corrected: PROVIDED FURTHER, That for the purposes of this subsection, if the licensee is the holder of a tract license and contracts with another entity 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. 2. Section 6, chapter 309, Laws of 1959 as amended by section 6, chapter 283, Laws of 1971 ex. sess. and RCW 75.28.087 are each amended to read as follows:

Every owner of a commercial fishing vessel shall obtain an annual commercial fishing license, not otherwise provided for in this chapter, for the taking of food fish and shellfish within the state of Washington: PROVIDED, That holders of commercial salmon fishing licenses as set forth in this chapter may retain incidently caught food fish other than salmon, and: PROVIDED, FURTHER, That licensed oyster (~~and~~) farmers, clam farmers, geoduck harvesters, and clam harvesters are not subject to this section. The fees for commercial fishing licenses required in this section shall be in the amounts set forth in this chapter prescribed by the type gear employed in the taking of food fish and shellfish.

Sec. 3. Section 75.28.280, chapter 12, Laws of 1955 as last amended by section 3, chapter 253, Laws of 1969 ex. sess. and RCW 75.28.280 are each amended to read as follows:

A license is required for each and every clam farm of one or more tracts of land being operated for commercial purposes on privately owned or leased tidelands and on leased beds of navigable waters in the state, except that a license under this section is not required for subtidal geoduck harvest tracts for which the required harvest rights and licenses have been obtained pursuant to other provisions of law. The fee for said license is fifteen dollars per annum, and shall be paid for each and every year in which clams are removed from the clam farm for purposes of sale. A separate license is required for each clam farm being operated within each of the following clam districts; northern Puget Sound district, southern Puget Sound district,

Grays Harbor district, and Willapa Harbor district; said districts are to include the waters, beds, shores, beaches, and tidelands of, northern Puget Sound, southern Puget Sound, Grays Harbor, and Willapa Harbor, respectively, as geographically defined by the director of fisheries under appropriate regulations.

Sec. 4. Section 4, chapter 253, Laws of 1969 ex. sess. and RCW 75.28-.287 are each amended to read as follows:

~~((A license is required for gear in which the harvesting head is directly guided or controlled by hand, the fee for which license shall be one hundred dollars per annum))~~ (1) A geoduck tract license is required for each subtidal geoduck tract for which harvest rights have been granted by the department of natural resources for the commercial harvest of geoducks. The fee is one hundred dollars per annum.

(2) Every diver engaged in the commercial harvest of geoduck or other clams shall obtain a nonassignable personal commercial fishing license. The fee is fifty dollars per annum.

(3) A license is required for each and every mechanical and/or hydraulic device operated for the purpose of taking clams other than geoduck clams for commercial purposes from tidelands and beds of navigable waters of the state of Washington, the fee for which license shall be three hundred dollars per annum.

Evidence of issuance of the licenses required by this section shall be prominently displayed by numbers, codes, or symbols upon the vessel used in geoduck or clam harvesting activities before engaging in the harvesting activities in a manner prescribed by the director of fisheries in rules promulgated under chapter 34.04 RCW.

NEW SECTION. Sec. 5. There is added to chapter 75.28 RCW a new section to read as follows:

The department of natural resources shall designate the areas of aquatic lands owned by the state of Washington which will be available for geoduck harvesting by licensed geoduck harvesters in accordance with RCW 79.01.124.

NEW SECTION. Sec. 6. There is added to chapter 75.28 RCW a new section to read as follows:

It is unlawful for any person to harvest clams or geoducks or to utilize any vessel with commercial hand held geoduck harvesting gear on any aquatic lands designated under section 5 of this 1979 act without first obtaining the licenses required by RCW 75.24.100 as now or hereafter amended and 75.28.287 as now or hereafter amended. Use or the mere presence of the gear in the water outside the licensed tract is prima facie evidence of a violation of this section.

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

(1) In addition to the penalties prescribed in RCW 75.08.260 and 75.28.380, the director of fisheries may revoke all geoduck personal commercial fishing licenses or geoduck tract licenses or both held by a person if within any five-year period after the effective date of this 1979 act:

(a) That person is convicted or has an unvacated bail forfeiture for two or more violations of the geoduck licensing or harvesting provisions of this title; or

(b) The department of fisheries receives a report from the department of natural resources of two or more violations by the person of the lease or harvesting agreement under chapters 79.01 or 79.20 RCW where the department of natural resources suspended or canceled the lease or harvesting agreement under section 8 of this 1979 act.

The director of fisheries shall not issue any geoduck personal commercial fishing license or geoduck tract license for a period of one year after the revocation to a person who has had a license revoked under this section except as provided under subsection (3) of this section.

(2) If, within any five-year period after the effective date of this 1979 act, any holder of a tract license permits any person to harvest geoducks on that tract, each violation by that person of the geoduck licensing or harvesting provisions of this title resulting in: (a) Either conviction or unvacated forfeiture of bail; or (b) a suspension or cancellation of the lease or harvesting agreement by the department of natural resources under section 8 of this 1979 act; shall be imputed to the holder of a tract license for the purpose of computing the number of the tract holder's violations under subsection (1) of this section.

(3) Appeals from revocations under this section shall be taken pursuant to the judicial review provisions of chapter 34.04 RCW. If the revocation of a license is determined to be invalid, the department of fisheries shall reissue a license or licenses to that person.

NEW SECTION. Sec. 8. There is added to chapter 79.01 RCW a new section to read as follows:

(1) The department of natural resources may enter into leases or harvesting agreements for the harvesting of geoducks. The department of natural resources may place terms and conditions in the leases or harvesting agreements as the department deems necessary. The department of natural resources may enforce the provisions of any lease or harvesting agreement by suspending or canceling the lease or harvesting agreement or through any other means contained in the lease or harvesting agreement. The department of natural resources may cancel any lease or harvesting agreement upon receiving a report from the department of fisheries of the person's second violation of the geoduck licensing or harvesting provisions under Title 75 RCW. Any lessee may terminate a lease entered into pursuant to this subsection if actions of a governmental agency, beyond the control of the

lessee, its agents or its employees, prohibit harvesting, for a period exceeding thirty days, during the term of the harvesting agreement. Upon termination of the lease, the lessee shall be reimbursed by the lessor for the cost paid on the lease less the value of the harvest already accomplished by the lessee on the leasehold.

(2) After the effective date of this act, all leases of state lands or harvesting agreements under this title for the purpose of harvesting geoduck clams shall require the lessee and the lessee's agent or representatives to comply with all applicable commercial diving safety standards and regulations promulgated and implemented by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists on the effect date of this act (84 stat. 1590 et seq.; 29 U.S.C. sec. 651 et seq.): **PROVIDED**, That for the purposes of this section and RCW 75.24.100 as now or hereafter amended all persons who dive for geoducks are deemed to be employees as defined by the federal occupational safety and health act. All leases shall provide that failure to comply with these standards is cause for suspension or cancellation of the lease: **PROVIDED FURTHER**, That for the purposes of this subsection if the lessee is the holder of a tract license and contracts with another entity for the harvesting of geoducks, the lease shall not be suspended or canceled if the lessee terminates its business relationship with such entity until compliance with the subsection is secured.

NEW SECTION. Sec. 9. 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 House April 25, 1979.
 Passed the Senate April 24, 1979.
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CHAPTER 142

[House Bill No. 860]

CITIES AND TOWNS—ANNEXATION—PROTECTION OF AGRICULTURAL LANDS—PAYMENT/SERVICE VALUE RELATIONSHIP

AN ACT Relating to decisions of boundary review boards; amending section 17, chapter 189, Laws of 1967 and RCW 36.93.170; and amending section 18, chapter 189, Laws of 1967 and RCW 36.93.180.

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

Section 1. Section 17, chapter 189, Laws of 1967 and RCW 36.93.170 are each amended to read as follows: