

senate and the environmental affairs committee of the house of representatives, prior to each legislative session.

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CHAPTER 457

[Engrossed Senate Bill No. 3067]

AQUATIC FARMING

AN ACT Relating to aquatic farming; amending RCW 15.65.020, 15.66.010, 43.23.030, 46.16.090, 75.08.080, 75.28.010, 75.28.280, 75.28.300, 77.08.020, 77.12.570, 77.12.590, 77.12.600, and 77.32.010; adding a new section to chapter 75.08 RCW; adding a new chapter to Title 15 RCW; adding a new chapter to Title 75 RCW; creating new sections; repealing RCW 75.28.265 and 75.28.282; and prescribing penalties.

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

NEW SECTION. Sec. 1. The legislature declares that aquatic farming provides a consistent source of quality food, offers opportunities of new jobs, increased farm income stability, and improves balance of trade.

The legislature finds that many areas of the state of Washington are scientifically and biologically suitable for aquaculture development, and therefore the legislature encourages promotion of aquacultural activities, programs, and development with the same status as other agricultural activities, programs, and development within the state.

The legislature finds that aquaculture should be considered a branch of the agricultural industry of the state for purposes of any laws that apply to or provide for the advancement, benefit, or protection of the agriculture industry within the state.

The legislature further finds that in order to ensure the maximum yield and quality of cultured aquatic products, the department of fisheries should provide diagnostic services that are workable and proven remedies to aquaculture disease problems.

It is therefore the policy of this state to encourage the development and expansion of aquaculture within the state. It is also the policy of this state to protect wildstock fisheries by providing an effective disease inspection and control program and prohibiting the release of salmon or steelhead trout by the private sector into the public waters of the state and the subsequent recapture of such species as in the practice commonly known as ocean ranching.

NEW SECTION. Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Aquaculture" means the process of growing, farming, or cultivating private sector cultured aquatic products in marine or freshwaters and includes management by an aquatic farmer.

(2) "Aquatic farmer" is a private sector person who commercially farms and manages the cultivating of private sector cultured aquatic products on the person's own land or on land in which the person has a present right of possession.

(3) "Private sector cultured aquatic products" are native, nonnative, or hybrids of marine or freshwater plants and animals that are propagated, farmed, or cultivated on aquatic farms under the supervision and management of a private sector aquatic farmer or that are naturally set on aquatic farms which at the time of setting are under the active supervision and management of a private sector aquatic farmer. When produced under such supervision and management, private sector cultured aquatic products include, but are not limited to, the following plants and animals:

SCIENTIFIC NAME	COMMON NAME
Enteromorpha	green nori
Monostroma	awo-nori
Ulva	sea lettuce
Laminaria	konbu
Nereocystis	bull kelp
Porphyra	nori
Iridaea	
Haliotis	abalone
Zhlamys	pink scallop
Hinnites	rock scallop
Tatinopecten	Japanese or weathervane scallop
Protothaca	native littleneck clam
Tapes	manila clam
Saxidomus	butter clam
Mytilus	mussels
Crassostrea	Pacific oysters
Ostrea	Olympia and European oysters
Pacifasticus	crayfish
Macrobrachium	freshwater prawn
Salmo and Salvelinus	trout, char, and Atlantic salmon
Oncorhynchus	salmon
Ictalurus	catfish
Cyprinus	carp
Acipenseridae	sturgeon

(4) "Department" means the department of agriculture.

(5) "Director" means the director of agriculture.

NEW SECTION. Sec. 3. The department is the principal state agency for providing state marketing support services for the private sector aquaculture industry.

NEW SECTION. Sec. 4. The department shall exercise its authorities, including those provided by chapters 15.64, 15.65, 15.66, and 43.23 RCW, to develop a program for assisting the state's aquaculture industry to market and promote the use of its products. The department shall consult with the advisory council in developing such a program.

NEW SECTION. Sec. 5. The director shall establish identification requirements for private sector cultured aquatic products to the extent that identifying the source and quantity of the products is necessary to permit the departments of fisheries and game to administer and enforce Titles 75 and 77 RCW effectively. The rules shall apply only to those private sector cultured aquatic products the transportation, sale, processing, or other possession of which would otherwise be required to be licensed under Title 75 or 77 RCW if they were not cultivated by aquatic farmers. The rules shall apply to the transportation or possession of such products on land other than aquatic lands and may require that they be: (1) Placed in labeled containers or accompanied by bills of lading or sale or similar documents identifying the name and address of the producer of the products and the quantity of the products governed by the documents; or (2) both labeled and accompanied by such documents.

The director shall consult with the directors of the departments of fisheries and game to ensure that such rules enable the departments of fisheries and game to enforce the programs administered under those titles. If rules adopted under chapter 69.30 RCW satisfy the identification required under this section for shellfish, the director shall not establish different shellfish identification requirements under this section.

****NEW SECTION. Sec. 6. (1) There is hereby created the aquaculture advisory council. The council shall consist of the following voting members appointed by the governor: One representative of private sector freshwater fin fish farmers; one representative of private sector marine fin fish farmers who does not practice ocean ranching; one representative of private sector marine shellfish farmers; one representative of marine plant farmers; one representative of farmers of oysters native to the state; and one representative of a state-wide sports fishing association or group. Each member shall serve a term of three years. The following shall serve as voting, ex officio members of the advisory council: A representative of the department of agriculture; a representative of the department of game; a representative of the department of fisheries; and the veterinary pathologist referred to in section 8(5) of this act. A representative of the department of natural resources shall serve as a nonvoting member of the advisory council.***

(2) The council shall advise the departments of agriculture, fisheries, and game on all aspects of aquatic farming including the performance, operation, expansion, development, promotion, and interdepartmental coordination.

(3) Any vacancies on the council shall be filled in the same manner as the original appointment.

(4) The council shall select a chairman by vote of the council members. A quorum consisting of at least six voting members must be present to conduct council business. The council shall meet at the call of the chairman or at the request of the director.

(5) The council shall expire June 30, 1991.

*Sec. 6 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 7. The department shall adopt rules under chapter 34.04 RCW to implement this chapter.

*NEW SECTION. Sec. 8. (1) The director of agriculture and the director of fisheries shall jointly develop, in consultation with the aquaculture advisory council, a program of disease inspection and control for aquatic farmers as defined in section 2 of this act. The program shall be administered by the department of fisheries 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 director of fisheries 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 34.04 RCW and shall assist in conducting those hearings. The authorities granted the department of fisheries by these rules and by RCW 75.08.080(1)(g), 75.24-.080, 75.24.110, 75.28.125, and sections 9, 10, and 11 of this act constitute

the only authorities of the department of fisheries to regulate private sector cultured aquatic products and aquatic farmers as defined in section 2 of this act. 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 of fisheries, 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 of fisheries from requesting the initiation of criminal proceedings for violations of the disease inspection and control rules.

(4) It is unlawful for any person to violate the rules adopted under subsection (2) or (3) of this section or to violate section 11 of this act.

(5) In administering the program established under this section, the department of fisheries 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 of fisheries, the department of game, or other fish-rearing entities.

(7) Whenever a civil action for damages is brought by an aquatic farmer as defined in section 2 of this act against the department of fisheries as a result of the department's ordering and obtaining the destruction of the farmer's private sector cultured aquatic product as defined in section 2 of this act, the court may award the farmer damages not exceeding three times the actual damages sustained if the court determines that the department was unreasonable in concluding that the risks presented by the disease or infestation warranted the destruction of the product.

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

NEW SECTION. Sec. 9. The directors of agriculture and fisheries shall jointly adopt by rule, in the manner prescribed in section 8(2) of this act, a schedule of user fees for the disease inspection and control program established under section 8 of this act. The fees shall be established such that the program shall be entirely funded by revenues derived from the user fees by the beginning of the 1987-89 biennium.

There is established in the state treasury an account known as the aquaculture disease control account which is subject to appropriation. Proceeds of fees charged under this section shall be deposited in the account. Moneys from the account shall be used solely for administering the disease inspection and control program established under section 8 of this act.

NEW SECTION. Sec. 10. (1) The director of fisheries shall consult regarding the disease inspection and control program established under section 8 of this act with the department of game, 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 of fisheries 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 of fisheries shall provide for the creation and distribution of a roster of biologists having a speciality 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.

NEW SECTION. Sec. 11. All aquatic farmers as defined in section 2 of this act shall register with the department of fisheries. The director shall develop and maintain a registration list of all aquaculture farms. Registered aquaculture farms shall provide the department production statistical data. The state veterinarian and the department of game shall be provided with registration and statistical data by the department.

NEW SECTION. Sec. 12. A new section is added to chapter 75.08 RCW to read as follows:

(1) It is unlawful for any person other than the United States, an Indian tribe recognized as such by the federal government, the state, a subdivision of the state, or a municipal corporation or an agency of such a unit of government to release salmon or steelhead trout into the public waters of the state and subsequently to recapture and commercially harvest such salmon or trout. This section shall not prevent any person from rearing salmon or steelhead trout in pens or in a confined area under circumstances where the salmon or steelhead trout are confined and never permitted to swim freely in open water.

(2) A violation of this section constitutes a gross misdemeanor.

Sec. 13. Section 2, chapter 256, Laws of 1961 as amended by section 2, chapter 7, Laws of 1975 1st ex. sess. and RCW 15.65.020 are each amended to read as follows:

The following terms are hereby defined:

(1) "Director" means the director of agriculture of the state of Washington or his duly appointed representative. The phrase "director or his designee" means the director unless, in the provisions of any marketing agreement or order, he has designated an administrator, board or other designee to act for him in the matter designated, in which case "director or his designee" means for such order or agreement the administrator, board or other person(s) so designated and not the director.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Marketing order" means an order issued by the director pursuant to this chapter.

(4) "Marketing agreement" means an agreement entered into and issued by the director pursuant to this chapter.

(5) "Agricultural commodity" means any distinctive type of agricultural, horticultural, viticultural, floricultural, vegetable or animal product, including private sector cultured aquatic products as defined in section 2 of this 1985 act, either in its natural or processed state, including bees and honey but not including timber or timber products. The director is hereby authorized to determine (on the basis of common usage and practice) what kinds, types or sub-types should be classed together as an agricultural commodity for the purposes of this chapter.

(6) "Production area" and "marketing area" means any area defined as such in any marketing order or agreement in accordance with RCW 15.65.350. "Affected area" means the marketing or production area so defined in such order, agreement or proposal.

(7) "Unit" of an agricultural commodity means a unit of volume, weight, quantity, or other measure in which such commodity is commonly measured. The director shall designate in each marketing order and agreement the unit to be used therein.

(8) "Affected unit" means in the case of marketing agreements and orders drawn on the basis of a production area, any unit of the commodity specified in or covered by such agreement or order which is produced in such area and sold or marketed or delivered for sale or marketing; and "affected unit" means, in the case of marketing agreements and orders drawn on the basis of marketing area, any unit of the commodity specified in or covered by such agreement or order which is sold or marketed or delivered for sale or marketing within such marketing area: PROVIDED, That in the case of marketing agreements "affected unit" shall include only those units which are produced by producers or handled by handlers who have assented to such agreement.

(9) "Affected commodity" means that part or portion of any agricultural commodity which is covered by or forms the subject matter of any marketing agreement or order or proposal, and includes all affected units thereof as herein defined and no others.

(10) "Producer" means any person engaged in the business of producing any agricultural commodity for market in commercial quantities. "Affected producer" means any producer of an affected commodity. "To produce" means to act as a producer. For the purposes of RCW 15.65.140 and 15.65.160 as now or hereafter amended "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a

bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(11) "Handler" means any person who acts, either as principal, agent or otherwise, in processing, selling, marketing or distributing an agricultural commodity which was not produced by him. "Affected handler" means any handler of an affected commodity. "To handle" means to act as a handler.

(12) "Producer-handler" means any person who acts both as a producer and as a handler with respect to any agricultural commodity. A producer-handler shall be deemed to be a producer with respect to the agricultural commodities which he produces, and a handler with respect to the agricultural commodities which he handles, including those produced by himself.

(13) "Cooperative association" means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of congress of the United States of February 18, 1922 as amended, known as the "Capper-Volstead Act" and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

(14) "Member of a cooperative association" means any producer who markets his product through such cooperative association and who is a voting stockholder of or has a vote in the control of or is a party to a marketing agreement with such cooperative association with respect to such product.

(15) "Producer marketing" or "marketed by producers" means any or all operations performed by any producer or cooperative association of producers in preparing for market and marketing, and shall include: (a) selling any agricultural commodity produced by such producer(s) to any handler; (b) delivering any such commodity or otherwise disposing of it for commercial purposes to or through any handler.

(16) "Commercial quantities" as applied to producers and/or production means such quantities per year (or other period of time) of an agricultural commodity as the director finds are not less than the minimum which a prudent man engaged in agricultural production would produce for the purpose of making such quantity of such commodity a substantial contribution to the economic operation of the farm on which such commodity is produced. "Commercial quantities" as applied to handlers and/or handling means such quantities per year (or other period of time) of an agricultural commodity or product thereof as the director finds are not less than the minimum which a prudent man engaged in such handling would handle for the purpose of making such quantity a substantial contribution to the handling operation in which such commodity or product thereof is so handled. In either case the director may in his discretion: (a) determine that substantial quantity is any amount above zero; and (b) apply the quantity so

determined on a uniform rule applicable alike to all persons which he finds to be similarly situated.

(17) "Commodity board" means any board established pursuant to RCW 15.65.220. "Board" means any such commodity board unless a different board is expressly specified.

(18) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

(19) "Section" means a section of this chapter unless some other statute is specifically mentioned. The present includes the past and future tenses, and the past or future the present. The masculine gender includes the feminine and neuter. The singular number includes the plural and the plural includes the singular.

(20) "Represented in a referendum" means that a written document evidencing approval or assent or disapproval or dissent is duly and timely filed with or mailed to the director by or on behalf of an affected producer and/or a volume of production of an affected commodity in a form which the director finds meets the requirements of this chapter.

(21) "Person" as used in this chapter shall mean any person, firm, association or corporation.

Sec. 14. Section 15.66.010, chapter 11, Laws of 1961 as last amended by section 6, chapter 288, Laws of 1983 and RCW 15.66.010 are each amended to read as follows:

For the purposes of this chapter:

(1) "Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act for him concerning some matter under this chapter.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Marketing order" means an order issued by the director pursuant to this chapter.

(4) "Agricultural commodity" means any distinctive type of agricultural, horticultural, viticultural, vegetable, and/or animal product, including private sector cultured aquatic products as defined in section 2 of this 1985 act, within its natural or processed state, including bees and honey but not including timber or timber products. The director is authorized to determine what kinds, types or subtypes should be classed together as an agricultural commodity for the purposes of this chapter.

(5) "Producer" means any person engaged in the business of producing or causing to be produced for market in commercial quantities any agricultural commodity. For the purposes of RCW 15.66.060, 15.66.090, and 15.66.120, as now or hereafter amended "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(6) "Affected producer" means any producer of an affected commodity.

(7) "Affected commodity" means any agricultural commodity for which the director has established a list of producers pursuant to RCW 15.66.060.

(8) "Commodity commission" or "commission" means a commission formed to carry out the purposes of this chapter under a particular marketing order concerning an affected commodity.

(9) "Unit" means a unit of volume, quantity or other measure in which an agricultural commodity is commonly measured.

(10) "Unfair trade practice" means any practice which is unlawful or prohibited under the laws of the state of Washington including but not limited to Titles 15, 16 and 69 RCW and chapters 9.16, 19.77, 19.80, 19.84, and 19.83 RCW, or any practice, whether concerning interstate or intra-state commerce that is unlawful under the provisions of the act of Congress of the United States, September 26, 1914, chapter 311, section 5, 38 U.S. Statutes at Large 719 as amended, known as the "Federal Trade Commission Act of 1914", or the violation of or failure accurately to label as to grades and standards in accordance with any lawfully established grades or standards or labels.

(11) "Person" includes any individual, firm, corporation, trust, association, partnership, society, or any other organization of individuals.

(12) "Cooperative association" means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of Congress of the United States, Feb. 18, 1922, chapter 57, sections 1 and 2, 42 U.S. Statutes at Large 388 as amended, known as the "Capper-Volstead Act" and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

(13) "Member of a cooperative association" or "member" means any producer of an agricultural commodity who markets his product through such cooperative association and who is a voting stockholder of or has a vote in the control of or is under a marketing agreement with such cooperative association with respect to such product.

Sec. 15. Section 43.23.030, chapter 8, Laws of 1965 as last amended by section 5, chapter 248, Laws of 1983 and RCW 43.23.030 are each amended to read as follows:

The director of agriculture shall exercise all the powers and perform all the duties relating to the development of markets, for agricultural products, state and federal cooperative marketing programs, land utilization for agricultural purposes, water resources, transportation, and farm labor as such

matters relate to the production, distribution and sale of agricultural commodities including private sector cultured aquatic products as defined in section 2 of this 1985 act.

Sec. 16. Section 46.16.090, chapter 12, Laws of 1961 as last amended by section 45, chapter 136, Laws of 1979 ex. sess. and RCW 46.16.090 are each amended to read as follows:

Motor trucks or trailers may be specially licensed based on the maximum gross weight thereof for fifty percent of the various amounts set forth in the schedule provided in RCW 46.16.070, when such trucks or trailers are owned and operated by farmers, but only if the following condition or conditions exist:

(1) When such trucks or trailers are to be used for the transportation of such farmer's own farm, orchard, or dairy products, or such farmer's own private sector cultured aquatic products as defined in section 2 of this 1985 act, from point of production to market or warehouse, and of supplies to be used on ~~((his))~~ the farmer's farm: PROVIDED, That fish other than those that are such private sector cultured aquatic products and forestry products shall not be considered as farm products; and/or

(2) When such trucks or trailers are to be used for the infrequent or seasonal transportation by one such farmer for another farmer in ~~((his))~~ the farmer's neighborhood of products of the farm, orchard, ~~((or))~~ dairy, or aquatic farm owned by such other farmer from point of production to market or warehouse, or supplies to be used on such other farm, but only if such transportation for another farmer is for compensation other than money: PROVIDED, HOWEVER, That farmers shall be permitted an allowance of an additional eight thousand pounds, within the legal limits, on motor trucks or trailers, when used in the transportation of such farmer's own farm machinery between ~~((his))~~ the farmer's own farm or farms and for a distance of not more than thirty-five miles from ~~((his))~~ the farmer's farm or farms.

The department shall prepare a special form of application to be used by farmers applying for licenses under this section, which form shall contain a statement to the effect that the vehicle or trailer concerned will be used subject to the limitations of this section. The department shall prepare special insignia which shall be placed upon all such vehicles or trailers to indicate that the vehicle or trailer is specially licensed, or may, in its discretion, substitute a special license plate for such vehicles or trailers for such designation.

Operation of such a specially licensed vehicle or trailer in transportation upon public highways in violation of the limitations of this section is a traffic infraction.

Sec. 17. Section 75.08.080, chapter 12, Laws of 1955 as last amended by section 15, chapter 46, Laws of 1983 1st ex. sess. and RCW 75.08.080 are each amended to read as follows:

(1) The director may adopt, amend, or repeal rules as follows:

(a) Specifying the times when the taking of food fish or shellfish is lawful or unlawful.

(b) Specifying the areas and waters in which the taking and possession of food 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 food fish or shellfish, and specifying the times, places, and manner in which the equipment may be used or possessed.

(d) Regulating the possession, disposal, landing, and sale of food fish or shellfish within the state, whether acquired within or without the state.

(e) Regulating the prevention and suppression of diseases and pests affecting food fish or shellfish.

(f) Regulating the size, sex, species, and quantities of food fish or shellfish that may be taken, possessed, sold, or disposed of.

(g) Specifying the statistical and biological reports required from fishermen, dealers, boathouses, or processors of food fish or shellfish.

(h) Classifying species of marine and freshwater life as food fish or shellfish.

(i) Classifying the species of food fish and shellfish that may be used for purposes other than human consumption.

(j) Other rules necessary to carry out this title and the purposes and duties of the department.

(2) Subsections (1)(a), (b), (c), (d), and (f) of this section do not apply to((:

~~(a) Licensed oyster farms or oysters produced thereon; or~~

~~(b)) private tideland owners and 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.~~

(3) Except for subsection (1)(g) of this section, this section does not apply to private sector cultured aquatic products as defined in section 2 of this 1985 act. Subsection (1)(g) of this section does apply to such products.

Sec. 18. Section 75.28.010, chapter 12, Laws of 1955 as last amended by section 101, chapter 46, Laws of 1983 1st ex. sess. and RCW 75.28.010 are each amended to read as follows:

(1) Except as otherwise provided by this title, 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

~~(d) ((Operate a commercial food fish or shellfish farm; or~~

~~(e))) Engage in processing or wholesaling food fish or shellfish.~~

(2) It is unlawful to engage in the activities described in subsection (1) of this section without having in possession the licenses or permits required by this title.

(3) No license or permit is required for the production or harvesting of private sector cultured aquatic products as defined in section 2 of this 1985 act 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 section 5 of this 1985 act, 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. 19. Section 75.28.280, chapter 12, Laws of 1955 as last amended by section 125, chapter 46, Laws of 1983 1st ex. sess. and RCW 75.28.280 are each amended to read as follows:

~~((1) A clam farm license is required for the licensee to operate a commercial clam farm of one or more tracts of lands on tidelands or beds of navigable waters. The annual license fee is fifteen dollars for residents and nonresidents:~~

~~A clam farm license is not required for subtidal geoduck tracts for which licenses have been obtained under RCW 75.28.287:~~

~~(2) An oyster farm license is required for the licensee to operate a commercial oyster farm on tidelands or beds of navigable waters. The annual license fee is fifteen dollars for residents and nonresidents:~~

~~(3) Separate clam farm and oyster farm licenses are required for each of the following districts as defined by rule of the director: Northern Puget Sound district, southern Puget Sound district, Grays Harbor district, and Willapa Harbor district:~~

~~(4)) A mechanical harvester 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. The annual license fee is three hundred dollars for residents and nonresidents.~~

Sec. 20. Section 75.28.300, chapter 12, Laws of 1955 as last amended by section 132, chapter 46, Laws of 1983 1st ex. sess. and RCW 75.28.300 are each amended to read as follows:

A wholesale fish dealer's license is required for:

(1) A business in the state to engage in the commercial processing of food fish or shellfish, including custom canning or processing of personal use food fish or shellfish.

(2) A business in the state to engage in the wholesale selling, buying, or brokering of food fish or shellfish. A wholesale fish dealer's license is not required of those businesses which buy exclusively from Washington licensed wholesale dealers and sell solely at retail.

(3) Fishermen (~~or aquaculturists~~) who land and sell their catch or harvest in the state to anyone other than a licensed wholesale dealer within or outside the state.

(4) A business to engage in the commercial manufacture or preparation of fertilizer, oil, meal, caviar, fish bait, or other byproducts from food fish or shellfish.

The annual license fee is thirty-seven dollars and fifty cents. A wholesale fish dealer's license is not required for persons (~~buying or selling oyster seed for transplant~~) engaged in the processing, wholesale selling, buying, or brokering of private sector cultured aquatic products as defined in section 2 of this 1985 act. However, if a means of identifying such products is required by rules adopted under section 5 of this 1985 act, the exemption from licensing requirements established by this subsection applies only if the aquatic products are identified in conformance with those rules.

Sec. 21. Section 77.08.020, chapter 36, Laws of 1955 as last amended by section 10, chapter 78, Laws of 1980 and RCW 77.08.020 are each amended to read as follows:

(1) As used in this title or rules of the commission, "game fish" means those species of the class Osteichthyes that shall not be fished for except as authorized by rule of the commission and includes:

SCIENTIFIC NAME	COMMON NAME
Ambloplites rupestris	rock bass
Coregonus clupeaformis	lake white fish
Ictalurus furcatus	blue catfish
Ictalurus melas	black bullhead
Ictalurus natalis	yellow bullhead
Ictalurus nebulosus	brown bullhead
Ictalurus punctatus	channel catfish
Lepomis cyanellus	green sunfish
Lepomis gibbosus	pumpkinseed
Lepomis gulosus	warmouth
Lepomis macrochirus	bluegill
Lota lota	burbot or fresh water ling
Micropterus dolomieu	smallmouth bass
Micropterus salmoides	largemouth bass
Oncorhynchus nerka (in its landlocked form)	kokanee or silver trout
Perca flavescens	yellow perch
Pomixis annularis	white crappie
Pomixis nigromaculatus	black crappie
Prosopium williamsoni	mountain white fish
Salmo aquabonita	golden trout

SCIENTIFIC NAME	COMMON NAME
Salmo clarkii	cutthroat trout
Salmo gairdnerii	rainbow or steelhead trout
Salmo salar	Atlantic salmon
Salmo trutta	brown trout
Salvelinus fontinalis	eastern brook trout
Salvelinus malma	Dolly Varden trout
Salvelinus namaycush	lake trout
Stizostedion vitreum	Walleye
Thymallus arcticus	arctic grayling

(2) Private sector cultured aquatic products as defined in section 2 of this 1985 act are not game fish.

Sec. 22. Section 77.28.020, chapter 36, Laws of 1955 as last amended by section 98, chapter 78, Laws of 1980 and RCW 77.12.570 are each amended to read as follows:

The commission shall adopt rules specifying the procedures, qualifications, and conditions for issuing a game farm license and governing the operation of game farms. Private sector cultured aquatic products as defined in section 2 of this 1985 act are exempt from regulation under this section.

Sec. 23. Section 77.28.080, chapter 36, Laws of 1955 as amended by section 100, chapter 78, Laws of 1980 and RCW 77.12.590 are each amended to read as follows:

Wildlife given away, sold, or transferred by a licensed game farmer shall have attached to each wildlife member, package, or container, a tag, seal, or invoice as required by the commission. Private sector cultured aquatic products as defined in section 2 of this 1985 act are exempt from regulation under this section.

Sec. 24. Section 77.28.090, chapter 36, Laws of 1955 as amended by section 101, chapter 78, Laws of 1980 and RCW 77.12.600 are each amended to read as follows:

A common carrier may transport wildlife shipped by a licensed game farmer if the wildlife is tagged, sealed, or invoiced as provided in RCW 77.12.590. Packages containing wildlife shall have affixed to them tags or labels showing the name of the licensee and the consignee. For purposes of this section, wildlife does not include private sector cultured aquatic products as defined in section 2 of this 1985 act. However, if a means of identifying such products is required by rules adopted under section 5 of this 1985 act, this exemption from the definition of wildlife applies only if the aquatic products are identified in conformance with those rules.

Sec. 25. Section 77.32.010, chapter 36, Laws of 1955 as last amended by section 2, chapter 284, Laws of 1983 and RCW 77.32.010 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, a license issued by the commission is required to:

- (a) Hunt for wild animals or wild birds or fish for game fish;
- (b) Practice taxidermy for profit;
- (c) Deal in raw furs for profit;
- (d) Act as a fishing guide;
- (e) Operate a game farm;
- (f) Purchase or sell anadromous game fish; or
- (g) Use department-managed lands or facilities as provided by rule of the commission.

(2) A permit issued by the director is required to:

- (a) Conduct, hold, or sponsor hunting or fishing contests or competitive field trials using live wildlife;
- (b) Collect wild animals, wild birds, game fish, or protected wildlife for research or display; or
- (c) Stock game fish.

(3) Aquaculture as defined in section 2 of this 1985 act is exempt from the requirements of this section, except when being stocked in public waters under contract with the department of game.

*NEW SECTION. Sec. 26. (1) The department of fisheries shall report to the legislature on the expenditure of funds needed to implement the disease program called for in section 8 of this act. The report shall detail the percentage of the funds originating from user fees and the percentage of the funds from the state general fund. The report shall be delivered to the legislature by January 1, 1987.

(2) The department shall survey the boundaries of the state's Puget Sound oyster reserves and shall assess the ability of those lands to support aquatic products if actively cultivated. The department shall submit a report to the legislature by January 1, 1986, identifying its findings regarding the support capacity of the reserves and the optimum use of the reserves for cultivating aquatic products.

*Sec. 26 was partially vetoed, see message at end of chapter.

NEW SECTION. Sec. 27. (1) Sections 1 through 7 of this act shall constitute a new chapter in Title 15 RCW.

(2) Sections 8 through 11 of this act shall constitute a new chapter in Title 75 RCW.

NEW SECTION. Sec. 28. The following acts or parts of acts are each repealed:

(1) Section 2, chapter 35, Laws of 1971, section 124, chapter 46, Laws of 1983 1st ex. sess. and RCW 75.28.265; and

(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