

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2793

Chapter 267, Laws of 1996

54th Legislature
1996 Regular Session

IMPLEMENTATION OF REFERENDUM BILL NO. 45

EFFECTIVE DATE: 7/1/96

Passed by the House March 2, 1996
Yeas 89 Nays 0

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate February 29, 1996
Yeas 47 Nays 0

JOEL PRITCHARD
President of the Senate

Approved March 29, 1996

MIKE LOWRY
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2793** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

March 29, 1996 - 4:50 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2793

AS AMENDED BY THE SENATE

Passed Legislature - 1996 Regular Session

State of Washington

54th Legislature

1996 Regular Session

By House Committee on Natural Resources (originally sponsored by Representatives Fuhrman, Jacobsen, Basich, Thompson, Grant and L. Thomas)

Read first time 02/02/96.

1 AN ACT Relating to implementation of Referendum Bill No. 45 by the
2 fish and wildlife commission; amending RCW 75.08.011, 75.08.230,
3 75.10.020, 75.10.030, 75.10.040, 75.10.050, 75.10.100, 75.10.110,
4 75.10.120, 75.10.130, 75.10.140, 75.10.150, 75.10.170, 75.10.180,
5 75.10.190, 75.10.200, 75.12.020, 75.12.070, 75.12.100, 75.12.115,
6 75.12.420, 75.12.650, 75.24.050, 75.24.090, 75.28.040, 75.28.110,
7 75.28.315, 75.28.323, 75.28.690, 77.04.020, 43.300.040, and 77.04.090;
8 reenacting and amending RCW 75.10.010; creating a new section;
9 repealing RCW 43.300.030; and providing an effective date.

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

11 NEW SECTION. **Sec. 1.** It is the intent of this legislation to
12 begin to make the statutory changes required by the fish and wildlife
13 commission in order to successfully implement Referendum Bill No. 45.

14 **Sec. 2.** RCW 75.08.011 and 1995 1st sp.s. c 2 s 6 (Referendum Bill
15 No. 45) are each amended to read as follows:

16 As used in this title or rules of the ((director)) department,
17 unless the context clearly requires otherwise:

18 (1) "Commission" means the fish and wildlife commission.

(2) "Director" means the director of fish and wildlife.

(3) "Department" means the department of fish and wildlife.

(4) "Person" means an individual or a public or private entity or organization. The term "person" includes local, state, and federal government agencies, and all business organizations, including corporations and partnerships.

(5) "Fisheries patrol officer" means a person appointed and commissioned by the commission, with authority to enforce this title, rules of the ~~((director))~~ department, and other statutes as prescribed by the legislature. Fisheries patrol officers are peace officers.

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

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

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

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

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

(11) "Resident" means a person who has maintained a permanent place of abode within the state for at least ninety days immediately preceding an application for a license, has established by formal evidence an intent to continue residing within the state, and who is not licensed to hunt or fish as a resident in another state.

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

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

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

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

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

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

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

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

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

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

(21) "Fishery" means the taking of one or more particular species of food fish or shellfish with particular gear in a particular geographical area.

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

(23) "Seaweed" means marine aquatic plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free floating form, and includes but is not limited to marine aquatic plants in the classes Chlorophyta, Phaeophyta, and Rhodophyta.

Sec. 3. RCW 75.08.230 and 1995 c 367 s 11 are each amended to read as follows:

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

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

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

(c) Fines and forfeitures collected under this title;

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

(e) Rentals or concessions of the department;

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

(g) Gifts.

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

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

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

(5) Proceeds from the sale of salmon carcasses and salmon eggs from state general funded hatcheries by the department of general administration shall be deposited in the regional fisheries enhancement group account established in RCW 75.50.100.

(6) Moneys received by the ~~((director))~~ commission under RCW 75.08.045, to the extent these moneys exceed estimates in the budget

1 approved by the legislature, may be allocated as unanticipated receipts
2 under RCW 43.79.270. Allocations under this subsection shall be made
3 only for the specific purpose for which the moneys were received,
4 unless the moneys were received in settlement of a claim for damages to
5 food fish or shellfish, in which case the moneys may be expended for
6 the conservation of these resources.

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

13 **Sec. 4.** RCW 75.10.010 and 1993 sp.s. c 2 s 25 and 1993 c 283 s 7
14 are each reenacted and amended to read as follows:

15 (1) Fisheries patrol officers and ex officio fisheries patrol
16 officers within their respective jurisdictions, shall enforce this
17 title, rules of the ((director)) department, and other statutes as
18 prescribed by the legislature.

19 (2) When acting within the scope of subsection (1) of this section
20 and when an offense occurs in the presence of the fisheries patrol
21 officer who is not an ex officio fisheries patrol officer, the
22 fisheries patrol officer may enforce all criminal laws of the state.
23 The fisheries patrol officer must have successfully completed the basic
24 law enforcement academy course sponsored by the criminal justice
25 training commission, or a supplemental course in criminal law
26 enforcement as approved by the department and the criminal justice
27 training commission and provided by the department or the criminal
28 justice training commission, prior to enforcing the criminal laws of
29 the state.

30 (3) Any liability or claim of liability which arises out of the
31 exercise or alleged exercise of authority by a fisheries patrol officer
32 rests with the department unless the fisheries patrol officer acts
33 under the direction and control of another agency or unless the
34 liability is otherwise assumed under a written agreement between the
35 department and another agency.

36 (4) Fisheries patrol officers may serve and execute warrants and
37 processes issued by the courts.

1 (5) Fisheries patrol officers may enforce the provisions of RCW
2 79.01.805 and 79.01.810.

3 **Sec. 5.** RCW 75.10.020 and 1983 1st ex.s. c 46 s 33 are each
4 amended to read as follows:

5 (1) Fisheries patrol officers may inspect and search without
6 warrant a person, boat, fishing equipment, vehicle, conveyance,
7 container, or property used in catching, processing, storing, or
8 marketing food fish or shellfish which they have reason to believe
9 contain evidence of violations of this title or rules of the
10 ~~((director))~~ department. This authority does not extend to quarters in
11 a boat, building, or other property used exclusively as a private
12 domicile.

13 (2) Fisheries patrol officers and ex officio fisheries patrol
14 officers may arrest without warrant a person they have reason to
15 believe is in violation of this title or rules of the ~~((director))~~
16 department.

17 **Sec. 6.** RCW 75.10.030 and 1990 c 144 s 5 are each amended to read
18 as follows:

19 (1) Fisheries patrol officers and ex officio fisheries patrol
20 officers may seize without warrant food fish or shellfish they have
21 reason to believe have been taken, killed, transported, or possessed in
22 violation of this title or rule of the ~~((director))~~ department and may
23 seize without warrant boats, vehicles, gear, appliances, or other
24 articles they have reason to believe ~~((is-[are]))~~ are held with intent
25 to violate or ~~((has-[have]))~~ have been used in violation of this title
26 or rule of the ~~((director))~~ department. The articles seized shall be
27 subject to forfeiture to the state, regardless of ownership. Articles
28 seized may be recovered by their owner by depositing into court a cash
29 bond equal to the value of the seized articles but not more than
30 twenty-five thousand dollars. The cash bond is subject to forfeiture
31 to the state in lieu of the seized article.

32 (2)(a) In the event of a seizure of an article under subsection (1)
33 of this section, proceedings for forfeiture shall be deemed commenced
34 by the seizure. Within fifteen days following the seizure, the seizing
35 authority shall serve notice on the owner of the property seized and on
36 any person having any known right or interest in the property seized.
37 Notice may be served by any method authorized by law or court rule,

1 including service by certified mail with return receipt requested.
2 Service by mail shall be deemed complete upon mailing within the
3 fifteen-day period following the seizure.

4 (b) If no person notifies the department in writing of the person's
5 claim of ownership or right to possession of the articles seized under
6 subsection (1) of this section within forty-five days of the seizure,
7 the articles shall be deemed forfeited.

8 (c) If any person notifies the department in writing within forty-
9 five days of the seizure, the person shall be afforded an opportunity
10 to be heard as to the claim or right. The hearing shall be before the
11 director or the director's designee, or before an administrative law
12 judge appointed under chapter 34.12 RCW, except that a person asserting
13 a claim or right may remove the matter to a court of competent
14 jurisdiction if the aggregate value of the articles seized is more than
15 five thousand dollars. The department hearing and any subsequent
16 appeal shall be as provided for in Title 34 RCW. The burden of
17 producing evidence shall be upon the person claiming to be the lawful
18 owner or person claiming lawful right of possession of the articles
19 seized. The department shall promptly return the seized articles to
20 the claimant upon a determination by the director or the director's
21 designee, an administrative law judge, or a court that the claimant is
22 the present lawful owner or is lawfully entitled to possession of the
23 articles seized, and that the seized articles were improperly seized.

24 (d)(i) No conveyance, including vessels, vehicles, or aircraft, is
25 subject to forfeiture under this section by reason of any act or
26 omission established by the owner of the conveyance to have been
27 committed or omitted without the owner's knowledge or consent.

28 (ii) A forfeiture of a conveyance encumbered by a perfected
29 security interest is subject to the interest of the secured party if
30 the secured party neither had knowledge nor consented to the act or
31 omission.

32 (e) When seized property is forfeited under this section the
33 department may retain it for official use unless the property is
34 required to be destroyed, or upon application by any law enforcement
35 agency of the state, release such property to the agency for the use of
36 enforcing this title, or sell such property, and deposit the proceeds
37 to the state general fund, as provided for in RCW 75.08.230.

1 **Sec. 7.** RCW 75.10.040 and 1983 1st ex.s. c 46 s 35 are each
2 amended to read as follows:

3 (1) Fisheries patrol officers and ex officio fisheries patrol
4 officers may serve and execute warrants and processes issued by the
5 courts to enforce this title and rules of the ((~~director~~)) department.

6 (2) To enforce this title or rules of the ((~~director~~)) department,
7 fisheries patrol officers may call to their aid any equipment, boat,
8 vehicle, or airplane, or ex officio fisheries patrol officer.

9 (3) It is unlawful to knowingly or willfully resist or obstruct a
10 fisheries patrol officer in the discharge of the officer's duties.

11 **Sec. 8.** RCW 75.10.050 and 1983 1st ex.s. c 46 s 36 are each
12 amended to read as follows:

13 Violations of this title or rules of the ((~~director~~)) department
14 occurring in the offshore waters may be prosecuted in a county
15 bordering on the Pacific Ocean, or a county in which the food fish or
16 shellfish are landed.

17 **Sec. 9.** RCW 75.10.100 and 1983 1st ex.s. c 46 s 41 are each
18 amended to read as follows:

19 If the prosecuting attorney of the county in which a violation of
20 this title or rule of the ((~~director~~)) department occurs fails to file
21 an information against the alleged violator, the attorney general upon
22 request of the ((~~director~~)) commission may file an information in the
23 superior court of the county and prosecute the case in place of the
24 prosecuting attorney. The ((~~director~~)) commission may request
25 prosecution by the attorney general if thirty days have passed since
26 the ((~~director~~)) commission informed the county prosecuting attorney of
27 the alleged violation.

28 **Sec. 10.** RCW 75.10.110 and 1990 c 144 s 6 are each amended to read
29 as follows:

30 (1) Unless otherwise provided for in this title, a person who
31 violates this title or rules of the ((~~director~~)) department is guilty
32 of a gross misdemeanor, and upon a conviction thereof shall be subject
33 to the penalties under RCW 9.92.020. Food fish or shellfish involved
34 in the violation shall be forfeited to the state. The court may
35 forfeit seized articles involved in the violation.

1 (2) The ((~~director~~)) commission may specify by rule, when not
2 inconsistent with applicable statutes, that violation of a specific
3 rule is an infraction under chapter 7.84 RCW.

4 **Sec. 11.** RCW 75.10.120 and 1990 c 144 s 7 are each amended to read
5 as follows:

6 (1) Upon conviction of a person for a violation of this title or
7 rule of the ((~~director~~)) department, in addition to the penalty imposed
8 by law, the court may forfeit the person's license or licenses. The
9 license or licenses shall remain forfeited pending appeal.

10 (2) The director may prohibit, for one year, the issuance of all
11 commercial fishing licenses to a person convicted of two or more gross
12 misdemeanor or class C felony violations of this title or rule of the
13 ((~~director~~)) department in a five-year period or prescribe the
14 conditions under which the license or licenses may be issued. For
15 purposes of this section, the term "conviction" means a final
16 conviction in a state or municipal court. An unvacated forfeiture of
17 bail or collateral of two hundred fifty dollars or more deposited to
18 secure the defendant's appearance in court, the payment of a fine, a
19 plea of guilty, or a finding of guilt on a violation of this title or
20 rule of the ((~~director~~)) department is equivalent to a conviction
21 regardless of whether the imposition of sentence is deferred or the
22 penalty is suspended.

23 **Sec. 12.** RCW 75.10.130 and 1983 1st ex.s. c 46 s 44 are each
24 amended to read as follows:

25 Upon two or more convictions of a person in a five-year period for
26 violating salmon fishing rules of the ((~~director~~)) department which
27 restrict fishing times or areas, the director shall deny all salmon
28 fishing privileges and suspend all salmon fishing licenses of that
29 person for one year. A person may not avoid this penalty by
30 transferring a commercial salmon ((~~fishing~~)) fishery license.

31 For the purposes of this section, the term "conviction" means a
32 final conviction in a state or municipal court. An unvacated
33 forfeiture of bail or collateral deposited to secure the defendant's
34 appearance in court, the payment of a fine, a plea of guilty, or a
35 finding of guilt on a violation of this title is equivalent to a
36 conviction regardless of whether the imposition of sentence is deferred
37 or the penalty is suspended.

1 **Sec. 13.** RCW 75.10.140 and 1990 c 163 s 7 are each amended to read
2 as follows:

3 (1) In addition to the penalties prescribed in RCW 75.10.110 and
4 75.10.120, the director may revoke geoduck diver licenses held by a
5 person if within a five-year period that person is convicted or has an
6 unvacated bail forfeiture for two or more violations of this title or
7 rules of the ((director)) department relating to geoduck licensing or
8 harvesting.

9 (2) Except as provided in subsection (3) of this section, the
10 director shall not issue a geoduck diver license to a person who has
11 had a license revoked. This prohibition is effective for one year
12 after the revocation.

13 (3) Appeals of revocations under this section may be taken under
14 the judicial review provisions of chapter 34.05 RCW. If the license
15 revocation is determined to be invalid, the director shall reissue the
16 license to that person.

17 **Sec. 14.** RCW 75.10.150 and 1985 c 248 s 5 are each amended to read
18 as follows:

19 Since violation of the rules of the ((director)) department
20 relating to the accounting of the commercial harvest of food fish and
21 shellfish result in damage to the resources of the state, liability for
22 damage to food fish and shellfish resources is imposed on a wholesale
23 fish dealer for violation of a provision in chapter 75.28 RCW or a rule
24 of the ((director)) department related to the accounting of the
25 commercial harvest of food fish and shellfish and shall be for the
26 actual damages or for damages imposed as follows:

27 (1) For violation of rules requiring the timely presentation to the
28 department of documents relating to the accounting of commercial
29 harvest, fifty dollars for each of the first fifteen documents in a
30 series and ten dollars for each subsequent document in the same series.
31 If documents relating to the accounting of commercial harvest of food
32 fish and shellfish are lost or destroyed and the wholesale dealer
33 notifies the department in writing within seven days of the loss or
34 destruction, the director shall waive the requirement for timely
35 presentation of the documents.

36 (2) For violation of rules requiring accurate and legible
37 information relating to species, value, harvest area, or amount of
38 harvest, twenty-five dollars for each of the first five violations of

1 this subsection following July 28, 1985, and fifty dollars for each
2 violation after the first five violations.

3 (3) For violations of rules requiring certain signatures, fifty
4 dollars for each of the first two violations and one hundred dollars
5 for each subsequent violation. For the purposes of this subsection,
6 each signature is a separate requirement.

7 (4) For other violations of rules relating to the accounting of the
8 commercial harvest, fifty dollars for each separate violation.

9 **Sec. 15.** RCW 75.10.170 and 1990 c 63 s 5 are each amended to read
10 as follows:

11 Upon conviction of a person for violation of the conditions or
12 requirements of an experimental fishery permit or provisions of this
13 title or rule of the (~~director~~) department while engaged in an
14 emerging commercial fishery, the director may suspend or revoke the
15 experimental fishery permit and all fishing privileges pursuant thereto
16 or present the conditions under which the experimental fishery permit
17 may be reissued. That suspension or revocation shall become effective
18 on the date the director gives the notice prescribed in RCW
19 34.05.422(1)(c).

20 For the purposes of this section, the term "conviction" means a
21 final conviction in a state or municipal court. An unvacated
22 forfeiture of bail or collateral of more than two hundred fifty dollars
23 deposited to secure the defendant's appearance in court, the payment of
24 a fine, a plea of guilty, or a finding of guilt on a violation of this
25 title is equivalent to a conviction regardless of whether the
26 imposition of sentence is deferred or the penalty is suspended.

27 **Sec. 16.** RCW 75.10.180 and 1990 c 144 s 1 are each amended to read
28 as follows:

29 Persons who fish for food fish or shellfish for personal use and
30 violate this title or the rules of the (~~director~~) department shall be
31 subject to the following penalties:

32 (1) The following violations are infractions and are punishable
33 under chapter 7.84 RCW:

34 (a) The failure to immediately record a catch of salmon or sturgeon
35 on a catch record card;

36 (b) The use of barbed hooks in a barbless hook-only fishery; and

(c) Other personal use violations specified by the ~~((director))~~
commission under RCW 75.10.110.

(2) The following violations are misdemeanors and are punishable
under RCW 9.92.030:

(a) The retention of undersized food fish or shellfish;

(b) The retention of more food fish or shellfish than is legally
allowed, but less than three times the legally allowed personal use
limit;

(c) The intentional wasting of recreationally caught food fish or
shellfish; and

(d) The setting or lifting of shrimp pots in Hood Canal from one
hour after sunset until one hour before sunrise.

(3) The following violations are gross misdemeanors and are
punishable under RCW 9.92.020:

(a) The snagging of food fish;

(b) Fishing in closed areas or during a closed season;

(c) Commingling a personal food fish catch with a commercial food
fish catch;

(d) The retention of at least three times the legally allowed
personal use limits of food fish or shellfish;

(e) The sale, barter, or trade of food fish or shellfish with a
wholesale value of less than two hundred fifty dollars by a person who
has caught the food fish or shellfish with fishing gear authorized
under personal use rules or who has received the food fish or shellfish
from someone who caught it with fishing gear authorized under personal
use rules; and

(f) Other unclassified personal use violations of Title 75 RCW.

(4) The following violation is a class C felony and is punishable
under RCW 9A.20.021(1)(c): The sale, barter, or trade of food fish or
shellfish with a wholesale value of two hundred fifty dollars or more
by a person who has caught the food fish or shellfish with fishing gear
authorized under personal use rules or has received the food fish or
shellfish from someone who caught it with fishing gear authorized under
personal use rules.

Sec. 17. RCW 75.10.190 and 1990 c 144 s 2 are each amended to read
as follows:

1 Persons who fish, buy, or sell food fish and shellfish commercially
2 and violate this title or the rules of the ((director)) department
3 shall be subject to the following penalties:

4 (1) The following violations are misdemeanors and are punishable
5 under RCW 9.92.030:

6 (a) The failure to complete a fish ticket with all the required
7 information for a commercial fish or shellfish landing; and

8 (b) The failure to report a commercial fish catch as required by
9 department rules.

10 (2) The following violations are gross misdemeanors and are
11 punishable under RCW 9.92.020:

12 (a) The retention of illegal food fish or shellfish species;

13 (b) The wasting of commercially caught food fish or shellfish;

14 (c) Commingling commercial and personal use food fish or shellfish
15 catches;

16 (d) The failure to comply with department rules on commercial
17 fishing licenses;

18 (e) The failure to comply with department requirements on fishing
19 gear specifications;

20 (f) The failure to obtain a delivery license as required by
21 department rules;

22 (g) Violations of the fisheries statutes or rules by fish buyers or
23 wholesale dealers other than violations for fish tickets under
24 subsection (1)(a) of this section;

25 (h) Fishing during a closed season;

26 (i) Illegal geoduck harvesting off the legal harvesting tract; and

27 (j) Other unclassified commercial violations of Title 75 RCW.

28 (3) The following violations are class C felonies and are
29 punishable under RCW 9A.20.021(1)(c):

30 (a) Intentionally fishing in a closed area using fishing gear not
31 authorized under personal use regulations;

32 (b) Intentionally netting salmon in the Pacific Ocean;

33 (c) Harvesting more than one hundred pounds of geoducks outside of
34 the boundaries of a harvest tract designated by a harvest agreement
35 from the department of natural resources if:

36 (i) The harvester does not have a valid harvesting agreement from
37 the department of natural resources; or

(ii) The harvesting is done more than one-half mile from the nearest boundary of any harvesting tract designated by a department of natural resources harvesting agreement;

(d) Unlawful participation by a non-Indian fisher with intent to profit in a treaty Indian fishery;

(e) Intentionally fishing within the closed waters of a fish hatchery;

(f) The sale, barter, or trade of food fish or shellfish with a wholesale value of two hundred fifty dollars or more by a person who does not have a valid commercial fishing license and has caught the food fish or shellfish using fishing gear not authorized under personal use rules, or has received the food fish or shellfish from someone who has caught it with fishing gear not authorized under personal use rules; and

(g) Being in possession of food fish or shellfish with a wholesale value of two hundred fifty dollars or more while using fishing gear not authorized under personal use regulations without a valid commercial fishing license.

Sec. 18. RCW 75.10.200 and 1993 sp.s. c 2 s 26 are each amended to read as follows:

Persons who violate this title or the rules of the ~~((director))~~ department shall be subject to the following penalties:

(1) The following violations are gross misdemeanors and are punishable under RCW 9A.02.020:

(a) Violating RCW 75.20.100; and

(b) Violating department statutes that require fish screens, fish ladders, and other protective devices for fish.

(2) The following violations are a class C felony and are punishable under RCW 9A.20.021(1)(c):

(a) Discharging explosives in waters that contain adult salmon or sturgeon(~~(:—PROVIDED, That))~~). However, the lawful discharge of devices for the purpose of frightening or killing marine mammals or for the lawful removal of snags or for actions approved under RCW 75.20.100 or 75.12.070(2) are exempt from this subsection; and

(b) To knowingly purchase food fish or shellfish with a wholesale value greater than two hundred fifty dollars that were taken by methods or during times not authorized by department rules, or were taken by someone who does not have a valid commercial fishing license, a valid

1 fish buyer's license, or a valid wholesale dealer's license, or were
2 taken with fishing gear authorized for personal use.

3 **Sec. 19.** RCW 75.12.020 and 1983 1st ex.s. c 46 s 49 are each
4 amended to read as follows:

5 It is unlawful to fish for or take food fish at a rack, dam, or
6 other obstruction or in the waters and on the beaches within one mile
7 below a rack, dam, or other obstruction except as provided by rule of
8 the ((director)) department.

9 **Sec. 20.** RCW 75.12.070 and 1983 1st ex.s. c 46 s 53 are each
10 amended to read as follows:

11 (1) Except as provided by rule of the ((director)) department, it
12 is unlawful to shoot, gaff, snag, snare, spear, stone, or otherwise
13 molest food fish or shellfish in state waters.

14 (2) It is unlawful to use or discharge an explosive substance in
15 state waters, except by permit of the director.

16 **Sec. 21.** RCW 75.12.100 and 1983 1st ex.s. c 46 s 55 are each
17 amended to read as follows:

18 It is unlawful to purchase, handle, deal in, sell, or possess food
19 fish or shellfish contrary to this title or the rules of the
20 ((director)) department.

21 **Sec. 22.** RCW 75.12.115 and 1983 1st ex.s. c 46 s 56 are each
22 amended to read as follows:

23 It is unlawful to fish commercially for crayfish in state waters
24 except where crayfish have been commercially cultured or as permitted
25 by rules of the ((director)) department.

26 **Sec. 23.** RCW 75.12.420 and 1983 1st ex.s. c 46 s 67 are each
27 amended to read as follows:

28 It is unlawful for a ((fisherman)) fisher, dealer, or processor of
29 food fish or shellfish to fail to make a report or return as required
30 by this title or rule of the ((director)) department.

31 **Sec. 24.** RCW 75.12.650 and 1983 1st ex.s. c 46 s 69 are each
32 amended to read as follows:

1 It is unlawful to fish commercially for salmon using fishing gear
2 not authorized for commercial salmon fishing by rule of the
3 ((director)) department. The ((director)) commission shall not
4 authorize angling gear or other personal use gear for commercial salmon
5 fishing.

6 **Sec. 25.** RCW 75.24.050 and 1983 1st ex.s. c 46 s 80 are each
7 amended to read as follows:

8 It is unlawful to take shellfish from state oyster reserves or
9 tidelands under the jurisdiction of the state contrary to this title or
10 rules of the ((director)) department.

11 **Sec. 26.** RCW 75.24.090 and 1983 1st ex.s. c 46 s 84 are each
12 amended to read as follows:

13 It is unlawful to destroy oysters or clams by culling them on land
14 or shore and leaving the culled oysters or clams there to die. The
15 culled oysters or clams must be returned to the harvest area, except as
16 provided by rule of the ((director)) department.

17 **Sec. 27.** RCW 75.28.040 and 1993 c 340 s 6 are each amended to read
18 as follows:

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

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

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

31 **Sec. 28.** RCW 75.28.110 and 1993 sp.s. c 17 s 35 are each amended
32 to read as follows:

33 (1) The following commercial salmon fishery licenses are required
34 for the license holder to use the specified gear to fish for salmon in
35 state waters. Only a person who meets the qualifications of RCW

75.30.120 may hold a license listed in this subsection. The licenses and their annual fees and surcharges under RCW 75.50.100 are:

Fishery	Resident	Nonresident	Surcharge
License	Fee	Fee	
(a) Salmon Gill Net«Grays Harbor-Columbia river	\$380	\$685	plus \$100
(b) Salmon Gill Net«Puget Sound	\$380	\$685	plus \$100
(c) Salmon Gill Net«Willapa Bay-Columbia river	\$380	\$685	plus \$100
(d) Salmon purse seine	\$530	\$985	plus \$100
(e) Salmon reef net	\$380	\$685	plus \$100
(f) Salmon troll	\$380	\$685	plus \$100

(2) A license issued under this section authorizes no taking or delivery of salmon or other food fish unless a vessel is designated under RCW 75.28.045.

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

(4) A salmon troll license includes a salmon delivery license.

(5) A salmon gill net license authorizes the taking of salmon only in the geographical area for which the license is issued. The geographical designations in subsection (1) of this section have the following meanings:

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

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

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

1 Columbia river and tributary sloughs described in (b) of this
2 subsection.

3 **Sec. 29.** RCW 75.28.315 and 1985 c 248 s 4 are each amended to read
4 as follows:

5 Wholesale fish dealers are responsible for documenting the
6 commercial harvest of food fish and shellfish according to the rules of
7 the ((director)) department. The director may allow only wholesale
8 fish dealers or their designees to receive the forms necessary for the
9 accounting of the commercial harvest of food fish and shellfish.

10 **Sec. 30.** RCW 75.28.323 and 1985 c 248 s 6 are each amended to read
11 as follows:

12 (1) A wholesale fish dealer shall not take possession of food fish
13 or shellfish until the dealer has deposited with the department an
14 acceptable performance bond on forms prescribed and furnished by the
15 department. This performance bond shall be a corporate surety bond
16 executed in favor of the department by a corporation authorized to do
17 business in the state of Washington under chapter 48.28 RCW and
18 approved by the department. The bond shall be filed and maintained in
19 an amount equal to one thousand dollars for each buyer engaged by the
20 wholesale dealer. In no case shall the bond be less than two thousand
21 dollars nor more than fifty thousand dollars.

22 (2) A wholesale dealer shall, within seven days of engaging
23 additional fish buyers, notify the department and increase the amount
24 of the bonding required in subsection (1) of this section.

25 (3) The director may suspend and refuse to reissue a wholesale fish
26 dealer's license of a dealer who has taken possession of food fish or
27 shellfish without an acceptable performance bond on deposit with the
28 department.

29 (4) The bond shall be conditioned upon the compliance with the
30 requirements of this chapter and rules of the ((director)) department
31 relating to the payment of fines for violations of rules for the
32 accounting of the commercial harvest of food fish or shellfish. In
33 lieu of the surety bond required by this section the wholesale fish
34 dealer may file with the department a cash deposit, negotiable
35 securities acceptable to the department, or an assignment of a savings
36 account or of a savings certificate in a Washington bank on an
37 assignment form prescribed by the department.

1 (5) Liability under the bond shall be maintained as long as the
2 wholesale fish dealer engages in activities under RCW 75.28.300 unless
3 released. Liability under the bond may be released only upon written
4 notification from the department. Notification shall be given upon
5 acceptance by the department of a substitute bond or forty-five days
6 after the expiration of the wholesale fish dealer's annual license. In
7 no event shall the liability of the surety exceed the amount of the
8 surety bond required under this chapter.

9 **Sec. 31.** RCW 75.28.690 and 1993 c 340 s 22 are each amended to
10 read as follows:

11 (1) A salmon roe license is required for a crew member on a boat
12 designated on a salmon charter license to sell salmon roe as provided
13 in subsection (2) of this section. An individual under sixteen years
14 of age may hold a salmon roe license.

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

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

19 (b) The roe is the property of the angler until the roe is given to
20 the crew member. The crew member shall notify the charter boat's
21 passengers of this fact;

22 (c) The crew member sells the roe to a licensed wholesale dealer;
23 and

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

27 **Sec. 32.** RCW 77.04.020 and 1993 sp.s. c 2 s 59 are each amended to
28 read as follows:

29 The department consists of the state fish and wildlife commission
30 and the director. The director is responsible for the administration
31 and operation of the department, subject to the provisions of this
32 title. The commission may delegate to the director ~~((additional duties
33 and powers necessary and appropriate to carry out this title))~~ any of
34 the powers and duties vested in the commission. The director shall
35 perform the duties prescribed by law and shall carry out the basic
36 goals and objectives prescribed ~~((pursuant to))~~ under RCW 77.04.055.

1 **Sec. 33.** RCW 43.300.040 and 1993 sp.s. c 2 s 5 are each amended to
2 read as follows:

3 In addition to other powers and duties granted or transferred to
4 the director, the ~~((director shall have the following powers and~~
5 ~~duties:~~

6 ~~(1) Supervise and administer the department in accordance with law;~~

7 ~~(2) Appoint personnel and prescribe their duties. Except as~~
8 ~~otherwise provided, personnel of the department are subject to chapter~~
9 ~~41.06 RCW, the state civil service law;~~

10 ~~(3) Enter into contracts on behalf of the agency;~~

11 ~~(4) Adopt rules in accordance with chapter 34.05 RCW, the~~
12 ~~administrative procedure act;~~

13 ~~(5) Delegate powers, duties, and functions as the director deems~~
14 ~~necessary for efficient administration but the director shall be~~
15 ~~responsible for the official acts of the officers and employees of the~~
16 ~~department;~~

17 ~~(6) Appoint advisory committees and undertake studies, research,~~
18 ~~and analysis necessary to support the activities of the department;~~

19 ~~(7) Accept and expend grants, gifts, or other funds to further the~~
20 ~~purposes of the department;~~

21 ~~(8) Carry out the policies of the governor and the basic goals and~~
22 ~~objectives as prescribed by the fish and wildlife commission pursuant~~
23 ~~to RCW 77.04.055; and~~

24 ~~(9) Perform other duties as are necessary and consistent with law))~~
25 commission may delegate to the director any of the powers and duties
26 vested in the commission.

27 NEW SECTION. **Sec. 34.** RCW 43.300.030 and 1993 sp.s. c 2 s 4 are
28 each repealed.

29 **Sec. 35.** RCW 77.04.090 and 1995 c 403 s 111 are each amended to
30 read as follows:

31 The commission shall adopt permanent rules and amendments to or
32 repeals of existing rules by approval of ~~((four))~~ a majority of the
33 members by resolution, entered and recorded in the minutes of the
34 commission: PROVIDED, That the commission may not adopt rules after
35 July 23, 1995, that are based solely on a section of law stating a
36 statute's intent or purpose, on the enabling provisions of the statute
37 establishing the agency, or on any combination of such provisions, for

1 statutory authority to adopt any rule. The commission shall adopt
2 emergency rules by approval of ~~((four))~~ a majority of the members. The
3 commission ~~((or the director))~~, when adopting emergency rules under RCW
4 77.12.150, shall adopt rules in conformance with chapter 34.05 RCW.
5 Judicial notice shall be taken of the rules filed and published as
6 provided in RCW 34.05.380 and 34.05.210.

7 A copy of an emergency rule, certified as a true copy by a member
8 of the commission, the director, or by a person authorized in writing
9 by the director to make the certification, is admissible in court as
10 prima facie evidence of the adoption and validity of the rule.

11 NEW SECTION. **Sec. 36.** This act shall take effect July 1, 1996.

Passed the House March 2, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 29, 1996.

Filed in Office of Secretary of State March 29, 1996.