

**“GREEN SHEET”**

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**Meeting:** August 5, 2010, Commission Meeting

**Agenda item 3 :** 2011 Agency-Request Legislation

**Staff Contact:** Ann Larson, Legislative Liaison, Director’s Office

**Presenter(s):** Ann Larson

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**Background:**

WDFW’s Executive Management Team has reviewed and approved the following agency-request legislative package during the June 23, 24, 2010 and July 28, 29, 2010 EMT meetings. The deadline for submission of agency budget requests (operating and capital) and agency-request legislation with budget impacts is due to the Office of Financial Management by September 13, 2010.

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**Policy issues:**

The package is made up of five overarching legislative agency requests that include: fiscal sustainability and efficient fund management; hydraulic project approval fees and policy; Title 77 omnibus; invasive species management fees; and, recreational access fees on WDFW lands. See attached legislative summary for detail.

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**Public involvement process and outcome:**

Current stakeholder efforts are underway for initial feedback and will continue through September. The public will have the opportunity to offer input following this briefing.

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**Action requested:**

The Fish and Wildlife Commission is requested to review proposed agency-request legislation for the 2011 legislative session on August 5, 2010 and provide comments, and hear public input on the legislative package. The request for Commission approval is scheduled for the August 20, 2010 via conference call.

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**Draft motion language:**

No action is requested at this time. Staff will present the final proposals to the Commission for consideration during its August 20, 2010, conference call meeting.

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**Justification for Commission Action:**

The Fish and Wildlife Commission sets policy for the Department of Fish and Wildlife, and is responsible for final review and approval of Department goals, objectives, and budget proposals (RCW 77.04.055).

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**Communications Plan:**

STATE OF WASHINGTON  
DEPARTMENT OF FISH AND WILDLIFE  
LEGISLATIVE AFFAIRS

***July 30, 2010***

TO: Fish & Wildlife Commission

FROM: Ann Larson, Legislative Liaison

**SUBJECT: WDFW 2011 Agency-Request Legislation**

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WDFW's Executive Management Team (EMT) had an additional opportunity to review and refine the following agency-request legislative package during the July 28, 29, 2010 EMT meetings.

The July 15 draft legislative summary has been revised and consists of five overarching legislative requests: fiscal sustainability and efficient fund management; hydraulic project approval fees and policy; Title 77 omnibus; invasive species management fees; and, recreational access fees on WDFW lands. Several of these requests are made up of multiple concepts and/or may include inter-agency coordination.

The Fish and Wildlife Commission is scheduled to review proposed agency-request legislation for the 2011 legislative session on August 5, 2010. The request for Commission approval is scheduled for the August 20, 2010 via conference call.

This package represents a working list of legislative concepts developed by the Department, which will also require additional scoping and stakeholder work. The deadline for submission of agency budget requests (operating and capital) and agency-request legislation with budget impacts is due to the Office of Financial Management (OFM) by September 13, 2010.

## **Draft WDFW Agency-Request Legislative Packages**

- 1 Fiscal Sustainability & Efficient Fund Management**
  - a. Recreational License Fee Increase*
  - b. Recreational License Revenue to WLS*
  - c. Commercial License Fee Increase*
  - d. Personalized License Plate Cost Increase*
  - e. PILT to Treasurer*
  - f. Standardized Pricing and Transaction Fees*
  - g. Consistent Dealer Fees*
  - h. Automated Commercial Licenses*
  - i. Discontinue Migratory Bird Collector Stamps*
  
- 2 Hydraulic Project Approval Fees & Policy**
  
- 3 Title 77 Omnibus**
  - a. Unlawful Burning on WDFW Lands*
  - b. Unlawful Purchase or Use of a License*
  - c. Record Keeping Requirements and Special Permits Reporting*
  - d. Resident License Requirements and Definition of Resident Military Personal*
  - e. Alternative Operator Exemption*
  - f. Hunter License Suspension for Shooting a Person or Livestock*
  - g. Penalties for Swans, Loons, and Raptors*
  - h. Adding "Ex Officio" to RCW 77.15.080*
  - i. Feeding Dangerous Wildlife*
  - j. Require Recreational License for Smelt Harvest*
  - k. Puget Sound Recreational Fishery Enhancement Fund Modification of Duties*
  - l. Regional Fisheries Enhancement Group Funding & Uses Clarification*
  - m. Invasive Species Management Chapter Consolidation*
  
- 4 Invasive Species Management Fees – possible joint request with DOE, RCO**
  
- 5 Recreational Access Fees on WDFW Lands – possible joint request with DNR**

# **1 Fiscal Sustainability & Efficient Fund Management**

## ***a. Recreational License Fee Increase***

With a significant drop in state revenues, the Washington Department of Fish and Wildlife (WDFW) experienced a nearly 30% reduction in state general fund support in the 2009-11 budget. Due to the significant impact to fish and wildlife activities, a temporary 10 percent surcharge on the sale of recreational hunting and fishing licenses was adopted to partially offset State General Fund (GFS) reductions. The fees were directed to fund hunting and fishing opportunities for recreational license holders. The 10 percent surcharge is estimated to generate \$6 million during the 2009-11 biennium, and is scheduled to expire on June 30, 2011.

Due to the influx of one-time funds to address the 2009-11 state budget shortfall, the outlook for the 2011-13 budget will most likely include further GFS reductions for state agencies, including WDFW. In addition, with the loss of the 10 percent surcharge, State Wildlife Account (WLS) revenues are expected to decrease by \$6.2 million. The non-restricted WLS is estimated to have a \$10 million shortfall over the biennium, assuming the surcharge expires.

Hunting and fishing license fees are set in statute by the legislature and most base fees have not been changed since 1999. Over the past 11 years, the revenues to the WLS have been relatively flat, while the costs of implementing programs have increased. An ongoing fee increase is required to maintain current services. A revenue proposal includes a strategic fee increase to provide sufficient funding to maintain hunting and fishing opportunities for recreational license holders and could include a small amount of expanded opportunities. Depending on the revenue options selected, revenues generated would range between \$6-16 million.

## ***b. Recreational License Revenue to WLS***

Washington receives approximately \$18 million per year from federal wildlife and sportfish programs. In order to qualify for programs under the Wildlife Restoration Act (1937) and Sportfish Restoration Act (1950), the state must pass legislation requiring that all revenues from recreational hunting and fishing licenses are used exclusively for fish and wildlife management activities. Revenue is defined to include the interest earned from hunting and fishing license revenue. Currently, revenues from recreational saltwater, shellfish, and razor clam licenses are deposited in GFS, with a statutory provision that these revenues be dedicated to the management of those activities. Revenues from all other recreational licenses are deposited in either the WLS, or accounts dedicated to fish and wildlife activities. Interest earned on the WLS is deposited in the GFS. To provide transparency and ensure to both hunters and fishers and the federal government that all revenues from hunting and fishing are used for fish and wildlife management activities, revenues from recreational saltwater fishing, shellfish, and razor clams should be deposited in the WLS to be used exclusively for fish and wildlife management. In addition, the interest earned on these license revenues should also be retained for fish and wildlife management as required by federal law. Approximately \$1.5 million per year would be shifted from the GFS to the WLS. Agency GFS expenditures would be reduced by the same amount.

**c. Commercial License Fee Increase**

This revenue proposal creates an application or renewal fee to recover direct costs associated with processing license applications and permits for commercial fish and game. Currently, revenue from commercial license fees is deposited into GFS. Cost recovered by the increase would be approximately \$480,000 and these new revenues would be deposited WLS.

This proposal would also increase the current fee of existing commercial licenses or permits to support the operation and management costs. The amount is currently not established pending a cost analysis by the Fish Program. Revenues would be deposited to the GFS.

Note: Aquaculture registrations would be assessed an application fee, but this proposal does not institute an aquaculture license or permit fee.

**d. Personalized License Plate Cost Increase**

Except for a \$2 increase in 2007 dedicated for funding wildlife rehabilitation facilities, the fees for PLP license plates have remained static for over fifteen years. Further resources are needed to manage critical habitats to keep Washington's common species common and prevent future federal or state listings that would result in expensive management of endangered species and more restrictive management of other land uses. This proposal would increase the price of personalized license plates by \$10 for management of department properties with projected revenues at \$500,000.

**e. PILT to Treasurer**

WDFW makes payments in-lieu of property tax (PILT) to county governments to offset the impact of Department land ownership which is property tax exempt. PILT payments usually increase each year due to a change in computation methods or an increase in land purchases. In order to avoid this annual request, WDFW is requesting to transfer PILT payment transactions to the Office of the State Treasurer. This would be consistent with the process that was approved by the Legislature for payment of PILT on The Department of Natural Resources natural area lands. WDFW would continue to work directly with the various counties to identify WDFW ownership and assist the counties in determining the correct amount of PILT. WDFW would then inform the Office of the State Treasurer of the amount to be paid to each county.

**f. Standardized Pricing and Transaction Fees**

Due to unique pricing of a select few WDFW licenses, there are accounting, staff and systems complexities. Temporary fishing licenses and Puget Sound Crab endorsements when established included a unique pricing concept where "total Price" was designated to include the WDFW system transaction fee (10%) and dealer fees. All other licenses, permits, and privileges have the transaction and dealer fee added to the price of the items. WDFW's objective is to create a consistent pricing structure, thus reducing staff time, system costs, and complexities that increase risk when implementing changes to the WILD system. Based on historical volumes the revenue impact to DFW Wildlife account is \$247,000 per year.

**g. Consistent Dealer Fees**

Dealer fees are collected at the point of sale from retail dealers and internet purchase points, but dealer fees are not applied to sales that occur directly with WDFW. As part of budget reductions, the intent of WDFW was to discontinue direct sales to its customers. Sales have diminished but have not been reduced to zero for very practical and responsible accommodations to the public who arrived at WDFW locations seeking assistance. By not charging a dealer fee WDFW competes with the pricing charged by the retail dealers and internet sales outlets. Revenue from fees would be nominal and be used to offset existing WDFW staff costs associated with selling and issuing recreation license documents.

**h. Automated Commercial Licenses**

Currently all 6,000 commercial licenses are issued manually and exclusively at WDFW's main office in Olympia, Washington. This legislative proposal would allow commercial licensees to renew, and pay for their commercial license(s) through retail dealers or over the Internet, through an existing automated licensing system. The existing system used for recreational hunting and fishing licenses would be adapted for this purpose. Phase I will implement approximately 600 Trapper, Taxidermy and fur dealers. Sales through the system would include cost recovery for system and administrative expense associated with the system through the current transaction fee of 10 percent. License issuance will be self-supporting and WDFW will gain staffing efficiencies of 300 hours per year.

**i. Discontinue Migratory Bird Collector Stamps**

This proposal would terminate the printing and issuance of migratory bird collector stamps. WDFW currently manages and audits the issuance of collector and complimentary stamps at a cost of approximately \$120,000 a biennium. Additionally, WDFW no longer uses a physical stamp to designate the migratory bird validation for hunt privilege. Currently, stamps are issued for free when requested by the hunter with a migratory bird license or \$10 per stamp by stamp collectors. The overall savings to WDFW would be approximately \$49,000 per year.

## **2     Hydraulic Project Approval Fees & Policy**

WDFW proposes amending existing statute to improve the effectiveness of the Hydraulic Project Approval (HPA) program in protecting fish life, reducing WDFW’s Habitat Program’s reliance on GFS, and improving streamlining and coordination with other natural resources agencies. This proposal would amend various provisions in Chapter 77.55 RCW (commonly referred to as the “hydraulic code”) to allow WDFW to charge fees for processing HPA applications, and establish a fee schedule for all activities that require an HPA. In addition, it would revise the hydraulic code to enhance various components necessary to protect fish life and habitat, such as WDFW’s civil authority for enforcing HPA compliance. WDFW’s determination of what specific components to pursue will depend on the outcome of discussions with key stakeholders and the public, but possibilities include:

- Granting WDFW the authority to place project types into categories that reflect potential environmental impact, with emphasis on use of individual permits for those projects with highest environmental risk;
- Enhancing provisions that are necessary to protect fish life including enhanced civil authority and clarifying the extent of HPA jurisdiction; and
- Charging fees for processing HPAs in order to reduce the program’s dependence on state general funds, and to fund critical compliance monitoring and reporting.

The fiscal component of the proposed legislation is to collect approximately \$2 million per year from new fees for HPA permits through development of a fee structure for all hydraulic project types, depositing monies collected into a dedicated HPA account. Funds collected in the HPA account will partially fund the operation and improvement of the HPA program.

### **3 Title 77 Omnibus**

#### ***a. Unlawful Burning on WDFW Lands***

Under existing law, WDFW does not have the authority to penalize people who start fires on lands owned or controlled by WDFW. Additionally, WDFW has no way to recover fire-suppression costs if a person's negligence results in burning department lands. This proposal would establish a strict liability standard for any individual who starts a fire that places WDFW lands in danger of destruction or damage and would also allow cost recovery of expenses (fighting, investigating, and litigating) for a fire that was negligently started on or spreading to lands owned or controlled by WDFW.

#### ***b. Unlawful Purchase or Use of a License***

WDFW needs to clarify that it is a violation to purchase a WA resident license if a person already possesses a resident license from another state or foreign country. The current statute penalizes buying or possessing a WA resident license if the person uses false information to do so (i.e. falsely purchases a resident license). These cases are difficult to prosecute because in order to prove the false-information element of the crime, the license vendor must testify to what the defendant told him/her. License vendors serve hundreds of people each day and rarely remember the specifics of what a particular individual told them. This proposal makes it easier to prove a violation if a person purchases or possesses a WA resident license when he/she already has a resident license from another state or country.

#### ***c. Record Keeping Requirements and Special Permits Reporting***

Currently, trappers, taxidermists, and fur dealers are required by statute to keep records, but the statutes do not provide WDFW with flexibility to change its record-keeping requirements or impose reporting requirements. The statute omits reporting requirements for people with special permits. Meat-cutters are not required by statute to keep records or abide by reporting requirements. WDFW uses records of trappers, taxidermists, fur dealers, and meat-cutters for two purposes: (1) to manage wildlife populations; and (2) to help enforcement officers track people who, for valuable consideration, illegally trap, process, hold, or store wildlife. WDFW needs flexibility in the law to be able to change record-keeping requirements and impose reporting requirements on trappers, taxidermists, fur dealers, and meat-cutters.

#### ***d. Resident License Requirements and Definition of Resident Military Personal***

WDFW does not have a statute prohibiting people who are residents from other countries from purchasing WA resident licenses: RCW 77.08.010(45) defines "resident" for license purposes as a person "who is not licensed to hunt or fish as a resident in another state." However, this does not include people who are residents of other countries, such as Canada. As part of WDFW's policy, license costs are lower for state residents because the fish and wildlife within the state are the property of state residents. WDFW needs to be able to charge non-resident fees for individuals who are residents of other countries, as required for individuals who are residents of other states.

**e. *Alternative Operator Exemption***

It has always been WDFW's policy to exempt alternate operators of charter boats from needing an alternate operator's license per RCW 77.65.120. However, RCW 77.65.110 contradicts RCW 77.65.120 and requires charter boat alternate operators to possess an alternate operator license and be designated on the license. WDFW wants to remove this contradiction and the requirement that charter boat alternate operators possess an alternate operator license and be designated on the license.

**f. *Hunter License Suspension for Shooting a Person or Livestock***

The current statute only allows WDFW to suspend the hunting privileges of a person who directly shoots another person or domestic livestock while hunting. It does not allow suspension of a person whose bullet causes shrapnel or something else to hit another person, and it does not define "shoots" to include bows or crossbows. Also, the current statute only allows WDFW to suspend a person's hunting privileges for 10 years if WDFW can prove the shooter did the shooting with "criminal negligence."

**g. *Penalties for Swans, Loons, and Raptors***

Currently, it is a misdemeanor to hunt, fish for, possess, or maliciously kill fish or wildlife classified as protected in WA, or to destroy their eggs or nests or violate any rule of the commission regarding taking, harming, harassing, possessing, or transporting them. However, the misdemeanor penalty does not sufficiently discourage people from taking certain protected raptors, birds, and waterfowl.

This proposal imposes a criminal wildlife penalty and a license-privilege suspension provision in RCW 77.15.130. The addition of such provisions will curb the unlawful taking of certain protected raptors, birds, and waterfowl. These species include the ferruginous hawk, common loon, bald eagle, peregrine falcon, tundra swan, and trumpeter swan. The proposed criminal wildlife penalty for each of these is \$2,000. As with the other criminal wildlife penalties imposed in chapter 77.15 RCW, this criminal wildlife penalty must be imposed in addition to any other fines or fees, and courts would not have the authority to dismiss, defer, or reduce it. A violator's license-privilege suspensions would be for two years and would continue to be suspended until the criminal wildlife penalty was paid in full.

**h. *Adding "Ex Officio" to RCW 77.15.080***

State Park rangers have traditionally worked closely with patrol officers from the Washington Department of Fish and Wildlife (WDFW) to enforce fishing rules within the state parks. Working together helps protect the natural resources from over-harvest especially for shellfish harvest where much of the activity occurs at the state parks. It also helps the WDFW officers to stretch their limited time and project areas where they provide all or most of the fishing enforcement. At this time, the rangers are not allowed to check buckets of clams coming from a state park beach or other catch/harvest gear. This makes it difficult for rangers to protect the resource from over-harvest and to work cooperatively with WDFW patrol officers.

***i. Feeding Dangerous Wildlife***

WDFW lacks statutory authority to penalize people who attract predatory wildlife to land or buildings by intentionally feeding predatory wildlife or leaving food where predatory wildlife can access it. Predatory wildlife, which include bear, cougar, and wolf, become habituated to humans and populated areas if they are intentionally fed or given easy access to food by humans. This poses safety risks to the general population.

This proposal creates an intent section and a new statute making it illegal to intentionally feed, attempt to feed, or negligently feed predatory wildlife and allows enforcement authorities to issue an infraction to anyone who negligently feeds predatory wildlife by leaving food, food waste, or other attractants around that are attracting or could attract predatory wildlife to land or buildings. It also allows them to cite a person with a misdemeanor if the person is intentionally feeding or attempting to feed predatory wildlife, or if the person was previously issued an infraction for negligently feeding predatory wildlife. Exemptions would include: legal hunters or trappers; farmers using best management practices or other generally accepted farming practices; operators of waste-disposal facilities; zoos; and, legal wildlife refuges.

***j. Require Recreational License for Smelt Harvest***

Currently recreational smelt (eulachon) fishers in Washington are not required to have a recreational fishing license. In addition, eulachon is proposed for listing under the Federal Endangered Species Act (ESA) by the National Marine Fisheries Service. The decline in the smelt runs and proposed ESA listing have added additional complexity and cost to managing eulachon. These actions have increased the need to protect and restore the species. This proposal would remove smelt from the list of fish for which people do not need a recreational license. Requiring people to buy a recreational license to fish for smelt will generate additional revenue to help WDFW regulate and manage the resource at approximately \$60,000 annually.

***k. Puget Sound Recreational Fishery Enhancement Fund Modification of Duties***

Audits by the State Auditor's Office and the Joint Legislative Affairs Review Committee identified two areas of legislation in RCW 77.105, the Puget Sound Recreational Fishery Enhancement Fund (PSRFEF) that should be changed to improve the intent of the legislation relative to implementation.

This proposal would amend RCW 77.105 so WDFW can adaptively utilize PSRFEF revenue to maximize the contribution of hatchery reared Chinook in recreational fisheries based on the cost-benefit ratio of fingerling releases versus yearling releases, hatchery reform recommendations, and ESA compliance. In addition, the addition of the word depleted to the section 77.105.050 makes the statute and Fish and Wildlife Commission policy consistent relative to application and implementation.

***l. Regional Fisheries Enhancement Group Funding & Uses Clarification***

During the 2010 legislative session the Governor, under the Governor's efforts to streamline government, proposed legislation that would eliminate a number of boards and commissions

throughout the state. This proposal included the Regional Fisheries Enhancement Group (RFEG) Advisory board. The proposed legislation would repeal RCW 77.95-110, Regional Fisheries Enhancement Group Advisory Board, and RCW 77.95.120, Regional Fisheries Enhancement Group Advisory Board – Duties and Authority; and amend sections of RCW 77.95 with reference to the Advisory Board, all of which would be effective on June 30, 2010.

It was later noticed that the elimination of the RFEG Advisory Board sections actually eliminated the clarifying language for the use of the RFEG funding. It also eliminated the collaboration between WDFW, and the RFEG's. This proposal would amend RCW 77.95.090 by reinstating the language allowing WDFW to retain up to 20 percent of RFEG Program funds deposited into the account for RFEG Program and will provide clarifying language to provide direction and guidelines as to how the RFEG's and the department are to collaborate and on what items.

**m. *Invasive Species Management Chapter Consolidation***

Aquatic and terrestrial invasive species statutes are scattered throughout Title 77 RCW (at least 7 chapters) and need to be reorganized into a single new chapter for improved effectiveness. Many critical regulatory gaps and needs have been identified through reviews by the Attorney General's office, the Aquatic Nuisance Species Committee, the Washington Invasive Species Council, and the Puget Sound Partnership in their Action Agenda including:

- Express authority to require prevention, containment, control, and eradication actions by property owner/operator/transporter;
- Rapid response lead authorization, emergency powers, and responsibilities;
- Express authority for closing or limiting activities on infested waters;
- Authority to establish cooperative agreements with other states in Columbia River Basin with emergency response assistance;
- Clarify and make definitions and classification systems consistent;
- Express authority to decontaminate, seize, and quarantine conveyances and property;
- Address terrestrial invasive animals;
- Address authorities with non-animal invasive species/pathways managed by department;
- Linkage with Invasive Species Council/statewide invasive species management plan;
- Add civil penalty structure;
- Test and refinement program for management tools;
- Address a person's duty to report invasive species sightings;
- Clarify "hold harmless" law;
- Reciprocity agreement authority within and between states such as AIS stickers; and
- Broad statutory authority to implement program through rules.

This proposal creates a single RCW 77 chapter for WDFW to regulate invasive species that would fill regulatory gaps and expand activities. It would also be a comprehensive chapter that would encompass Aquatic Invasive Species Prevention and Enforcement proposal elements and provide a revenue-generating mechanism for the program (*see Invasive Species Management Fees below*).

#### **4 Invasive Species Management Fees** – possible joint request with DOE, RCO

This proposal amends RCW 88.02.050 to continue the Aquatic Invasive Species Prevention and Enforcement account funding beyond June 30, 2012. It target funding for the invasive species management program at \$1.5 to \$2.5 million annually for aquatic invasive species only.

Current options to increase revenue include:

- Increase existing watercraft annual registration fee (current: \$2; target \$5)
- Add new annual non-motorized watercraft fee (current: \$0; target \$3 to \$5)
- Add new annual nonresident watercraft fee (current: \$0; target \$20)

#### **5 Recreational Access Fees on WDFW lands** –possible joint request with DNR

WDFW currently manages approximately 900,000 acres dedicated to preservation of fish and wildlife-focused open space and conservation based recreation (hunting, fishing, hiking, wildlife viewing, etc.). WDFW also manages nearly 700 sites, where the public accesses Washington' waterways for kayaking, rafting, fishing, and other water-related recreation activities. WDFW's land management is generally funded with a mix of Federal and state dollars which combined averages \$3.75 per acre per year. By comparison Federal Refuge land operates with an average of \$12-\$14 per acre per year

The vehicle use permit proposal would expand requirements from improved facilities to all department lands (and possibly DNR lands). Currently hunters and fishers receive a free vehicle use permit when they purchase a license whether they use department lands or not. Others wishing to use department lands are charged \$10. This proposal would charge hunters and fishers \$5 and others (including non-consumptive users) \$40 for an annual vehicle use permit.

Projected revenues range from \$1-2 million and would be dedicated to operation and maintenance of lands including habitat enhancement and the development and maintenance of facilities.