

RCW 79.135.030 Wrongful taking of shellfish from public lands—Civil remedies. (1) If a person wrongfully takes shellfish or causes shellfish to be wrongfully taken from the public lands and the wrongful taking is intentional and knowing, the person is liable for damages of treble the fair market retail value of the amount of shellfish wrongfully taken. If a person wrongfully takes shellfish from the public lands under other circumstances, the person is liable for damages of double the fair market value of the amount of shellfish wrongfully taken.

(2) For purposes of this section, a person "wrongfully takes" shellfish from public lands if the person takes shellfish: (a) Above the limits of any applicable laws that govern the harvest of shellfish from public lands; (b) without reporting the harvest to the department of fish and wildlife or the department where the reporting is required by law or contract; (c) outside the area or above the limits that an agreement or contract from the department allows the harvest of shellfish from public lands; or (d) without a lease or purchase of the shellfish where the lease or purchase is required by law prior to harvest of the shellfish.

(3) The remedies in this section are for civil damages and shall be proved by a preponderance of the evidence. The department may file a civil action in Thurston county superior court or the county where the shellfish were taken against any person liable under this section. Damages recovered under this section shall be applied in the same way as received under geoduck harvesting agreements authorized by RCW 79.135.210.

(4) For purposes of the remedies created by this section, the amount of shellfish wrongfully taken by a person may be established either:

(a) By surveying the aquatic lands to reasonably establish the amount of shellfish taken from the immediate area where a person is shown to have been wrongfully taking shellfish;

(b) By weighing the shellfish on board any vessel or in possession of a person shown to be wrongfully taking shellfish; or

(c) By any other evidence that reasonably establishes the amount of shellfish wrongfully taken.

The amount of shellfish established by (a) or (b) of this subsection shall be presumed to be the amount wrongfully taken unless the defendant shows by a preponderance of evidence that the shellfish were lawfully taken or that the defendant did not take the shellfish presumed to have been wrongfully taken. Whenever there is reason to believe that shellfish in the possession of any person were wrongfully taken, the department or the department of fish and wildlife may require the person to proceed to a designated off-load point and to weigh all shellfish in possession of the person or on board the person's vessel.

(5) This civil remedy is supplemental to the state's power to prosecute any person for theft of shellfish, for other crimes where shellfish are involved, or for violation of rules of the department of fish and wildlife. [2005 c 155 § 714; 1994 c 264 § 73; 1990 c 163 § 9. Formerly RCW 79.96.130.]