



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

Mailing Address: P.O. Box 43200, Olympia, WA 98504-3200 • (360) 902-2200 • TDD (360) 902-2207
Main Office Location: Natural Resources Building, 1111 Washington Street SE, Olympia, WA

December 1, 2022

The Honorable Christine Rolfes
Chair, Senate Ways and Means
303 John A. Cherberg Building
Post Office Box 40466
Olympia, WA 98504-0466

The Honorable Timm Ormsby
Chair, House Appropriations
315 John L. O'Brien Building
Post Office Box 40600
Olympia, WA 98504-0600

The Honorable Kevin Van De Wege
Chair, Senate Agriculture, Water,
Natural Resources, and Parks
212 John A. Cherberg Building
Post Office Box 40424
Olympia, WA 98504-0424

The Honorable Mike Chapman
Chair, House Rural Development,
Agriculture, and Natural Resources
132B Legislative Building
Post Office Box 40600
Olympia, WA 98504-0600

Dear Chairs Rolfes, Ormsby, Van De Wege, and Chapman,

I am writing to provide you with the Washington Department of Fish and Wildlife's report to the legislature regarding the Environmental Protection Division (EPD) of the Attorney General Office (AGO) funding via proviso (49) in our 2022 supplemental operating budget. Funding and the proviso language requires a report to the relevant committees of the legislature per language that reads as follows:

(49) \$852,000 of the general fund—state appropriation for fiscal year 2023 is provided solely for the department to provide additional capacity to the attorney general's office to prosecute environmental crimes. The department must provide an annual report by December 1st of each year, to the appropriate committees of the legislature, on the progress made in prosecuting environmental crimes.

This proviso provides the Washington Department of Fish and Wildlife (Agency) in fiscal year 2023 with \$852,000 of the general funds as pass-through funding for the sole purpose of having the attorney general's office to prosecute environmental crimes referred by the Agency. These funds are to be renewed in the coming fiscal years.

The proviso also identified the Environmental Protection Division (EPD) of the Attorney General Office (AGO) as the unit which will be handling the Agency's referrals. In July of 2022, the EPD consisted of three prosecuting attorneys and support staff. The EPD prosecutors are tasked with prosecuting a variety of environmental crimes, from pollution to wildlife trafficking. At the writing of this report, the EPD has one prosecutor dedicated to handling animal related crimes. However, with the funding of this proviso, two additional prosecutors and necessary support staff are being added to help with handling the increase in Agency referred cases. It is expected these additional prosecutors will be added by December 31, 2022.

Environmental Prosecution

December 1, 2022

Page 2

If you have any questions or concerns about this report, please feel free to contact me at (360) 480-1472.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. McBride', with a stylized flourish at the end.

Tom McBride
Legislative Director

WDFW – Environmental Protection Division of the Attorney General Office

Engrossed Substitute Senate Bill 5693, Chapter 297,
Laws of 2022, section 308(49)



December 1, 2022

Table of Contents

Overview.....	2
Background	2
Memorandum of Understanding	3
Case Investigations and Referrals	3

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Overview

Background

Prosecution of fish and wildlife cases have traditionally been problematic. Not in the sense the cases lacked merit, but rather county prosecutors are faced with prosecuting a variety of criminal cases which include crimes against people, property crimes, as well as environmental crimes. It should not be unexpected that for an elected prosecutor, crimes against people and property rate a bit higher than environmental crimes. This is not to say that prosecuting environmental crimes are not important to the public. In some of the more egregious violations of fish and wildlife laws, there is more public outcry for justice than for some violent crimes against people.

Even when there is a desire, there may not be the capability to properly prosecute a fish and wildlife case. With an increasing case load for the average deputy prosecutor, there is limited time to invest in gaining the understanding of the importance of properly handling a complex fish and wildlife case. Prosecution of a violator is one aspect of a criminal case, the bigger and sometimes more important aspect is to deter others from committing the same or similar violations. Failure to deter others can have large economic impacts to rural areas if the impacts to fish and wildlife populations by violators jeopardize management objectives.

Compounding what would be considered the normal issues with prosecuting fish and wildlife cases was the recent Covid related impacts to the courts. Now backlogged with higher priority cases, some county prosecutors are not able to accept/file fish and wildlife cases. Then when they do file cases, some of the plea offers are poor at best and provide little incentive to comply with fish and wildlife regulations. This is particularly true when the violations involve high valued commercial fish and shellfish.

To address the decline in the number of Fish and Wildlife cases being prosecuted by county prosecutors, Engrossed Substitute Senate Bill 5693, Chapter 297, Laws of 2022, section 308(49) (ESSB 5693) was passed. This bill provides the Washington Department of Fish and Wildlife (Agency) in the fiscal year 2023 with \$852,000 of the general funds as pass-through funding for the sole purpose of having the attorney general's office to prosecute environmental crimes. These funds are to be renewed in the coming fiscal years.

With the passage of this bill, the Environmental Protection Division (EPD) of the Attorney General Office (AGO) was identified as the unit which will be handling the Agency's referrals. In July of 2022, the EPD consisted of three prosecuting attorneys and support staff. The EPD prosecutors are tasked with prosecuting a variety of environmental crimes, from pollution to wildlife poaching. As of this writing the EPD has one prosecutor dedicated to handling animal related crimes. However, with the funding of ESSB 5693, two additional prosecutors and necessary support staff are being added to help with handling the increase in Agency referred cases. It is expected these additional prosecutors will be added by December 31, 2022.



Although ESSB 5693 provides the funding for the AGO to prosecute environmental crimes referred by the Agency, RCW 36.27.020(4) requires the county prosecutor to “*Prosecute all criminal and civil actions in which the state or the county may be a party.*” Under RCW 43.10.232, county prosecutors may request and thereby grant concurrent authority to the AGO to investigate and prosecute crimes occurring in their jurisdiction. To streamline this process, EPD attorneys have been visiting county prosecutors throughout the state to advise them of the services EPD can provide as well as their ability to accept larger, more complex cases. It appears that many of the county prosecutors are receptive to working with the EPD concerning fish and wildlife criminal matters and developing a cooperative relationship to address the prosecution of Fish and Wildlife cases.

With this increased capacity and outreach, there is a concern that some county prosecutors will begin to decline to prosecute all fish and wildlife cases with the hope EPD will accept them. EPD is not capable of handling such a large volume of cases across the state. While EPD may not be able to accept every criminal referral in the state, EPD attorneys may consult with and train local prosecutors on the cases that they cannot accept. To that end, the Agency’s criminal justice liaison and EPD prosecutors plan to conduct training with county prosecutors across the state regarding the specific areas related to Fish and Wildlife criminal cases and the importance of such prosecutions. Along with the training of local prosecutors, EPD will be offering training opportunities to Fish and Wildlife officers on how to complete and present a thorough investigation along with preparing cases for trial.

Memorandum of Understanding

The Agency and AGO are in the final stages of developing a memorandum of understanding (MOU) outlining the roles and responsibilities of each party. This MOU should be signed and in place by the first of December. In addition to working on the MOU, EPD is developing case criteria for acceptance of Agency referred cases. This criterion will be shared with the Agency for the purpose of assisting officers as they conduct their investigations. Even though the MOU is not yet in effect, the parties have agreed to a billing process for the work associated with assistance on Fish and Wildlife related investigations.

Case Investigations and Referrals

The Agency upon passage of ESSB 5693 began to request EPD support with ongoing and complex investigations by reviewing search warrants and providing advice regarding investigative techniques. To further support Fish and Wildlife Officers conducting investigations and to provide timely support for criminal investigations, EPD has established a hotline where Fish and Wildlife officers can call and speak to an EPD criminal attorney at any time.

Additionally, to address the concerns of sharing sensitive data between the Agency and EPD, the Agency has invested in an approved Criminal Justice Information (CJI) software which provides for secured file transfer. The purchase of this software allows officers to submit unredacted information directly to EPD prosecutors for review and comments.



As of this writing the AGO is currently handling two significant fish and wildlife cases referred to them by the Agency. These cases were referred prior to the passage of ESSB 5693 and are in different divisions, not with EPD. However, EPD has been very active and has reviewed and signed off on over a dozen affidavits for search warrants and began a partnership with their prosecutor counterparts from other states to ensure a cohesive approach to multi-state investigations and prosecutions.

