

# WDFW – Environmental Protection Division of the Attorney General Office



Washington  
Department of  
**FISH &  
WILDLIFE**

Dec. 1, 2023



State of Washington  
DEPARTMENT OF FISH AND WILDLIFE

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December 1, 2023

The Honorable June Robinson  
Chair, Senate Ways and Means  
303 John A. Cherberg Building  
Post Office Box 40448  
Olympia, WA 98504-0438

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

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

Dear Chairpersons Robinson, Ormsby, Van De Wege, and Chapman,

I am writing to provide you with the Washington Department of Fish and Wildlife's (WDFW) 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 Department with \$852,000 of General Fund-State as pass-through funding for the sole purpose of having the Attorney General's Office (AGO) 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 AGO as the unit which will be handling the agency's referrals. Since this proviso was implemented, the EPD has hired three prosecutors and additional support staff to focus on a variety of environmental crimes from pollution to wildlife trafficking. They have provided legal review for 24 investigations,

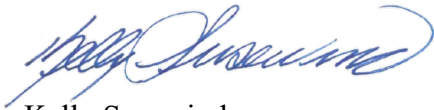
including search warrants. They have been referred 22 cases, have filed five cases, and declined six cases.

Although the prosecution of fish and wildlife cases has not drastically increased, the understanding of and education around fish and wildlife law enforcement has grown significantly. EPD prosecutors are becoming subject matter experts in the field of fish and wildlife and the relationships they are creating with officers cannot be understated. More officers are reaching out to the EPD, hoping to have these prosecutors handle their cases instead of some of the local prosecutors. The EPD has been consulted regarding potential cases in every region of the state.

WDFW Police is excited and encouraged to see this partnership grow and expand so that we may continue to prosecute and deter those that negatively impact our state's natural resources.

If you have any questions about this report to the legislature, please do not hesitate to contact Tom McBride, WDFW's Legislative Director, at (360) 480-1472.

Sincerely,



Kelly Susewind  
Director

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Cover photo provided by WDFW Police

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## Background

### **To fulfill requirements of a 2022 operating budget proviso (SB 5693, 2022 p. 549), which 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.

### **History**

In 1890, Gov. Ferry appointed the first Washington Fish Commissioner. In this [Third Annual Report](#), Commissioner Crawford highlighted the need for the Fish Commission to more fully carry out the detection and punishment of law violators made for the protection of the food fish in our state. As clearly identified in 1892, the need to detect and hold accountable those individuals who violated and thereby negatively impacted our state natural resources was and continues to be a vital part of fish and wildlife management. This sentiment may be even more important today, as the population of the state has expanded to more than 7.5 million people, resulting in environmental impacts to native species and habitat loss. The people of Washington place a high value upon our natural resources and have expressed an expectation such resources will be justly protected.

For 130 years, there have been many changes to the laws, regulations, and procedures associated with enforcing fish and wildlife regulations as well as the state's judicial system. These changes were intended to streamline processes or to ensure that the proper legal processes are in place. Prior to 2012, most of the fish and wildlife legal code consisted of criminal offenses which were bail forfeitable. A bail forfeiture signifies that an offender is willing to pay the bail amount as the penalty for the offense without admitting any guilt. With many individuals either making an error in judgement or failing to be informed of the regulations, the bail forfeiture process worked well and very few cases resulted in anything more than a bench trial.

Once this process was changed as a matter of due process, accused violators were subject to the full criminal judicial process. In many places, prosecutors were ill-prepared for this and lacked the subject expertise to handle the influx of these cases. In response, the Washington Department of Fish and Wildlife (WDFW) requested the adoption of a large code revision which changed many lower criminal offenses to infractions. The agency wanted to hold accountable those individuals whose actions were egregious or had a greater impact on management objectives, such as overharvest and closed season harvest, or who violated ethical and safety concerns, such as spotlighting big game. These changes to lower-level violations appeared to address the increase in criminal cases from Fish and Wildlife Officers and eased the burden on county courts and county prosecutors.

In 2017, the agency began to see a troubling trend of fish and wildlife related cases not being prosecuted in a growing number of counties. There were a variety of reasons why this was occurring. Several common themes noted were that prosecutors were becoming overwhelmed with other criminal cases, there was a desire for prosecutors to focus on crimes against individuals versus crimes against wildlife, and continual turn-over in senior staff which resulted in a decrease in subject matter expertise.





There was also a failure by some prosecutors to fully understand the potential impacts to both the local and state economy when fish and wildlife violators were not held accountable.

In response, the agency in 2020 requested changes to the criminal code to further reduce more criminal offenses to infractions. The remaining criminal code represents those violations which the agency feels are most important and necessary to retain. This is very similar to the changes which occurred to the traffic statute in 1981.

The COVID-19 pandemic and the accompanying law enforcement and judicial reforms have had large and continuing impacts on the agency's ability to pursue criminal prosecution of fish and wildlife violators. The agency examined their record management system (RMS) to identify the number of criminal citations issued or filed with the courts along with those referred to prosecutors for the three-year period between 2020 through 2022. The agency then requested district court records concerning wildlife case dispositions for the same period. This information was compiled to break down violation types, county of filing, and disposition amongst other data points. Two primary violation types were closely examined. These were fishing violations under [RCW 77.15.380](#) and big game violations under [RCW 77.15.410](#).

## Fishing Related Violations

For fishing related criminal violations ([RCW 77.15.380](#)), the agency's RMS system noted 2,241 charges have been filed with the courts or referred to the county prosecutor. District court records showed that only 720 criminal charges were filed with the courts during the 2020-2022 time period by the officers directly or through the prosecutor's office. These 720 charges resulted in 438 being dismissed, 33 were deferred (then dismissed), 129 were amended to another charge or reduced to an infraction, 115 were found or plead guilty, and one was found not guilty or acquitted. The remaining cases are still pending.



Photos of poached pink and coho salmon (left) that were caught using illegal snagging gear (right). Fish and Wildlife Officers discovered four individuals illegally poaching salmon on the Snohomish River. These individuals were conducting unlawful recreational fishing in the first degree.



## Big Game Related Violations

For big game (elk, deer, bear, cougar) related criminal violations ([RCW 77.15.410](#)), there were 895 charges filed or referred, however, only 266 were charged in district courts, by the officers directly, or through the prosecutor's office. Of these 266 charges, 133 were dismissed, 56 were amended to another charge/infraction, 35 were deferred or entered into a diversion, 41 were found or plead guilty, and one was found not guilty or acquitted.



Photo of black bear in the North Cascades (WDFW Region 6). In September 2023, [the Washington State Attorney General's Office filed charges](#) against a man alleged to have baited and killed bears along with elk in North Bend. Photo by Eric Siverson.

## Low Conviction Rate

The low conviction rate should not be interpreted as a reflection of poor case preparation. Fish and Wildlife Officers take great pride in their cases because of the extraordinary amount of time invested into an investigation. When charges are referred it is because the officer has identified those as the most appropriate based on the totality of the circumstance and facts known at the time. Cases are well put together and detail the events to a level seen in many felony-based investigations. When prosecutors decide to amend, defer, or dismiss fish and wildlife charges, there are implications to agency administrative procedures such as license suspensions for continued and/or repeated violations, forfeiture of property used in the commission of the crime, and the wildlife civil penalties associated with the harvest and/or take of certain species of wildlife.



There are instances when the cases can severely impact fish and wildlife management objectives. For example, when an individual is suspected of committing a commercial fishing related violation, involving the illegal take of a species worth thousands of dollars to a fish buyer, and the resulting fine is \$150, the potential of a large payday far outweighs the risk. This does not even consider the biological, economical, and co-management impacts that such violations have for the state of Washington. If there is no threat of being held accountable, there is no deterrence to a growing number of individuals.

## Expenditures

To date, the agency has authorized reimbursement to the AGO for \$140,492.45 of billable hours. The bulk of these billable hours have occurred since spring 2023, when two additional prosecutors were added to the EPD. With the addition of a third prosecutor and the increase in case-related activity, there should be a notable increase in billable hours.





# Memorandum of Understanding

In September 2023, WDFW and the Environmental Protection Division (EPD) of the Attorney General's Office signed a memorandum of understanding (MOU) . The MOU outlined a variety of principles related to this new partnership to include the tracking of chargeable time by EPD, record maintenance and management, and independent capacity. The independent capacity section states that the AGO retains sole authority and discretion to determine whether the AGO will seek and/or receive concurrent authority to initiate and conduct prosecutions pursuant to [RCW 43.10.232](#) or when requested by WDFW under [RCW 77.15.065](#).

The importance of this clause is to ensure a clear separation of the roles and responsibilities of each agency. It also signifies that with the passage of ESSB 5693, the Legislature did not change other laws which identify the county prosecutor as having the primary responsibilities of representing the state in criminal proceedings which they might be party of.

This clause does not change the working relationship WDFW has with county prosecutors. County prosecutors retain that discretion on whether to file/charge an individual with a crime. To ensure WDFW is fully informed of any decision to decline a case, the agency will receive, in writing, a full explanation or justification. Unlike WDFW's relationship with a county prosecutor's office, the MOU provides the agency with a right to appeal a decision regarding the EPD's declining to file charges.

Agency representatives have further agreed to monthly meetings to discuss pending cases being investigated by WDFW and the status of cases referred to and accepted by the EPD. There is great value in these monthly meetings as the representatives can discuss potential resolutions to cases accepted by the EPD and provide progress reports to agency staff. This is a great opportunity for officers to interact with local county prosecutors.



# Case Investigations and Referrals

As per the MOU, both the agency and the EPD are to keep records concerning the number of cases referred, filed with the courts, closed, and declined. The EPD also keeps records regarding the open cases in which they are assisting by reviewing search warrants or provide legal analysis.

## Open Investigations

Currently, the agency has requested search warrant reviews or legal reviews of 24 separate investigations. In many of these cases, there are multiple individuals and/or corporations under investigation. In many courts within the state, judges require a prosecutor to review affidavits and search warrants prior to submitting them to the courts for consideration. The benefit of having the EPD prosecutors review our affidavits is that it allows EPD prosecutors an opportunity to see and learn about our investigations prior to referring cases upon completion. By doing these reviews, EPD prosecutors gain the opportunity to review fish and wildlife laws and potential case law. This is both beneficial for prosecutors as well as to the agency. Fish and Wildlife Officers, when dealing with a case requiring multiple search warrants, will have a single point of contact for each of their warrant reviews. In some county prosecuting offices, an officer might have a new prosecutor for each review, and each prosecutor will have their own understanding of the law or they might not have any knowledge or understanding of fish and wildlife laws and so the review is of little benefit. This limitation demonstrates how overworked and understaffed some county prosecutor's offices are.

Fish and Wildlife Officers work cases involving state and federal violations, so some case reviews might require the EPD prosecutors to investigate federal violations and interact with federal prosecutors to determine the best course of prosecution, if one is necessary. These legal reviews are not referrals as many are still in the investigation state.

## Referred Cases

The EPD prosecutors are currently reviewing 22 cases. For a case to be referred, it means the investigation has been completed by the officer(s), reviewed by their immediate supervisor, and the Regional Captain has authorized the report to be sent to the EPD for their consideration. It is helpful if an EPD prosecutor reviewed a search warrant affidavit however, there is no change in the review process. The supervisor of the EPD does an initial review to ensure the merits of the case fall within the guidelines for the EPD to handle. If approved at this level, the case then gets assigned to a prosecutor for a complete analysis. If there had been a search warrant review, then that prosecutor would retain the case for such analysis. Once reviewed, the prosecutor would recommend charges or decline the case based on a legal issue. If charges are recommended, then the case is submitted up the chain of command for approval. There are two levels of supervisory approval once charges are recommended. If the case is declined, then per the MOU, the agency has a right to appeal to the next level.

Once final approval is obtained, the assigned prosecutor will need to seek concurrent jurisdiction from the prosecutor of county the violation occurred in. While this is occurring, the EPD prosecutor will be drafting and preparing to file the associated charges. This is a timely process. However, as the EPD prosecutors gain experience regarding fish and wildlife crimes and related case law, the overall time spent reviewing and requesting approval should decline.



## Filed Cases

EPD prosecutors have filed five cases since the onset of the legislative proviso. Two additional cases, which had been in the review process, are set to be filed by the end of 2023. Of the five cases currently filed, two are set for trial, one is pending a warrant arrest of the suspect (currently out of state to avoid prosecution), and one is pending a plea deal. The fifth case, the one most recently filed in Spokane County District Court, was originally referred to EPD as felony wildlife trafficking case. The case involved a business that was selling prohibited wildlife parts. Through a pre-trial agreement, the business owner agreed to enter a guilty plea on behalf of the business for a reduced charge. The plea agreement required the business to pay a monetary fine and not have any violations for a period of two years.

This is great example of the strength of working with the State Attorney General Office. There was no trial, one plea offer was made, and the matter was completed in one court visit. The most important aspect of this case to the investigating detective was the communication between himself and the prosecuting attorney prior to a plea being offered. It was apparent that the prosecutor wanted to ensure the detective was agreeable to the offer prior to it being made. This is not a requirement by the prosecutor but because this occurred it helped build a stronger and more positive working relationship between the two agencies.

## Declined Cases

There have been six cases which were declined by EPD at one level or another. The agency could not appeal against one of the cases based on the level it was declined. However, the case was referred to the county prosecutor who has agreed to file reduced charges against the individual. The agency opted not to appeal a second case that was declined as the local prosecutor, who initially recommended referring it to the EPD, is now reconsidering filing charges. The remaining cases which were declined were not appealed based on the justification provided by an EPD review. These cases did not lack probable cause but rather the merits of the case did not justify a large investment of time and effort by an EPD prosecutor.



## Notable Observations

With the passage of ESSB 5693, a representative from EPD began to collaborate with the supervisor from the agency's Statewide Investigative Unit (SIU). This newly formed partnership provided the two agencies the space and opportunity to learn about each other and to establish a trusting, open line of communication. Although some officers might already have such a relationship with their county prosecutor, this is not a common occurrence across the state for all officers. When hiring the two new prosecutors for the EPD, staff within the AGO authorized a Fish and Wildlife Detective to be on the initial interview board.

Although the prosecution of fish and wildlife cases has not drastically increased, the understanding of and education around fish and wildlife law enforcement has grown significantly. EPD prosecutors are becoming subject matter experts in the field of fish and wildlife. Additionally, EPD staff have taken steps to introduce themselves to many of the state's prosecuting attorneys to both inform them of the availability of the EPD to accept environmental cases or to assist with similar trials.

The positive relationship between the agency's SIU detectives and the EPD has proven to be very beneficial in one very important area: case referrals. Typically, the agency's SIU detectives work on the larger, more complex criminal investigations. With the detectives buying into this newfound partnership, fellow officers are also recognizing the benefits. More officers are reaching out to the EPD, hoping to have these prosecutors handle their cases instead of some of the local prosecutors. The EPD has been consulted regarding potential cases in every region of the state. They are quickly becoming exposed to an alarming number of issues.



Environmental Protection Division prosecutors from the Attorney General's Office on a field trip with Fish and Wildlife Officers, digging up clams and getting firsthand experience out in the field. Photo provided by WDFW Police.

To further expose the EPD to the agency's field officers, EPD prosecutors have and continue to schedule onsite ride-along's with officers from across the state. Since many of the EPD prosecutors do not have a





fish and wildlife background, these opportunities to see issues firsthand provides an insight very few county prosecutors are able to experience.

The benefit of this growing relationship between the agency and the AGO has been recognized by other states. Washington is not alone when it comes to experiencing frustration regarding the prosecution of environmental law violations. Recently the Oregon State Department of Justice (DOJ) authorized an additional position within their office to take on certain types of environmental case referrals from the Oregon State Police, Fish and Wildlife Division.

In closing, WDFW Police is excited and encouraged to see this partnership grow and expand so that we may continue to prosecute and deter those that negatively impact our State's natural resources.

