

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6553

Chapter 281, Laws of 2002

57th Legislature
2002 Regular Session

INVASIVE AQUATIC SPECIES

EFFECTIVE DATE: 6/13/02

Passed by the Senate March 12, 2002
YEAS 43 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 6, 2002
YEAS 93 NAYS 0

FRANK CHOPP

**Speaker of the
House of Representatives**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6553** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK

Secretary

Approved April 1, 2002

FILED

April 1, 2002 - 11:16 a.m.

GARY LOCKE

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6553

AS AMENDED BY THE HOUSE

Passed Legislature - 2002 Regular Session

State of Washington 57th Legislature 2002 Regular Session

By Senate Committee on Natural Resources, Parks & Shorelines
(originally sponsored by Senators Poulsen, Oke and Regala; by request
of Governor Locke)

READ FIRST TIME 02/06/2002.

1 AN ACT Relating to invasive aquatic species; amending RCW
2 77.08.010, 77.12.020, and 77.15.290; reenacting and amending RCW
3 77.15.080; adding a new section to chapter 77.15 RCW; adding new
4 sections to chapter 77.12 RCW; creating new sections; and prescribing
5 penalties.

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

7 NEW SECTION. **Sec. 1.** The legislature recognizes the potential
8 economic and environmental damage that can occur from the introduction
9 of invasive aquatic species. The purpose of this act is to increase
10 public awareness of invasive aquatic species and enhance the department
11 of fish and wildlife's regulatory capability to address threats posed
12 by these species.

13 **Sec. 2.** RCW 77.08.010 and 2001 c 253 s 10 are each amended to read
14 as follows:

15 As used in this title or rules adopted under this title, unless the
16 context clearly requires otherwise:

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

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

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

2 (4) "Person" means and includes an individual; a corporation; a
3 public or private entity or organization; a local, state, or federal
4 agency; all business organizations, including corporations and
5 partnerships; or a group of two or more individuals acting with a
6 common purpose whether acting in an individual, representative, or
7 official capacity.

8 (5) "Fish and wildlife officer" means a person appointed and
9 commissioned by the director, with authority to enforce this title and
10 rules adopted pursuant to this title, and other statutes as prescribed
11 by the legislature. Fish and wildlife officer includes a person
12 commissioned before June 11, 1998, as a wildlife agent or a fisheries
13 patrol officer.

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

23 (7) "To hunt" and its derivatives means an effort to kill, injure,
24 capture, or harass a wild animal or wild bird.

25 (8) "To trap" and its derivatives means a method of hunting using
26 devices to capture wild animals or wild birds.

27 (9) "To fish," "to harvest," and "to take," and their derivatives
28 means an effort to kill, injure, harass, or catch a fish or shellfish.

29 (10) "Open season" means those times, manners of taking, and places
30 or waters established by rule of the commission for the lawful hunting,
31 fishing, taking, or possession of game animals, game birds, game fish,
32 food fish, or shellfish that conform to the special restrictions or
33 physical descriptions established by rule of the commission or that
34 have otherwise been deemed legal to hunt, fish, take, harvest, or
35 possess by rule of the commission. "Open season" includes the first
36 and last days of the established time.

37 (11) "Closed season" means all times, manners of taking, and places
38 or waters other than those established by rule of the commission as an
39 open season. "Closed season" also means all hunting, fishing, taking,

1 or possession of game animals, game birds, game fish, food fish, or
2 shellfish that do not conform to the special restrictions or physical
3 descriptions established by rule of the commission as an open season or
4 that have not otherwise been deemed legal to hunt, fish, take, harvest,
5 or possess by rule of the commission as an open season.

6 (12) "Closed area" means a place where the hunting of some or all
7 species of wild animals or wild birds is prohibited.

8 (13) "Closed waters" means all or part of a lake, river, stream, or
9 other body of water, where fishing or harvesting is prohibited.

10 (14) "Game reserve" means a closed area where hunting for all wild
11 animals and wild birds is prohibited.

12 (15) "Bag limit" means the maximum number of game animals, game
13 birds, or game fish which may be taken, caught, killed, or possessed by
14 a person, as specified by rule of the commission for a particular
15 period of time, or as to size, sex, or species.

16 (16) "Wildlife" means all species of the animal kingdom whose
17 members exist in Washington in a wild state. This includes but is not
18 limited to mammals, birds, reptiles, amphibians, fish, and
19 invertebrates. The term "wildlife" does not include feral domestic
20 mammals, old world rats and mice of the family Muridae of the order
21 Rodentia, or those fish, shellfish, and marine invertebrates classified
22 as food fish or shellfish by the director. The term "wildlife"
23 includes all stages of development and the bodily parts of wildlife
24 members.

25 (17) "Wild animals" means those species of the class Mammalia whose
26 members exist in Washington in a wild state and the species *Rana*
27 *catesbeiana* (bullfrog). The term "wild animal" does not include feral
28 domestic mammals or old world rats and mice of the family Muridae of
29 the order Rodentia.

30 (18) "Wild birds" means those species of the class Aves whose
31 members exist in Washington in a wild state.

32 (19) "Protected wildlife" means wildlife designated by the
33 commission that shall not be hunted or fished.

34 (20) "Endangered species" means wildlife designated by the
35 commission as seriously threatened with extinction.

36 (21) "Game animals" means wild animals that shall not be hunted
37 except as authorized by the commission.

38 (22) "Fur-bearing animals" means game animals that shall not be
39 trapped except as authorized by the commission.

1 (23) "Game birds" means wild birds that shall not be hunted except
2 as authorized by the commission.

3 (24) "Predatory birds" means wild birds that may be hunted
4 throughout the year as authorized by the commission.

5 (25) "Deleterious exotic wildlife" means species of the animal
6 kingdom not native to Washington and designated as dangerous to the
7 environment or wildlife of the state.

8 (26) "Game farm" means property on which wildlife is held or raised
9 for commercial purposes, trade, or gift. The term "game farm" does not
10 include publicly owned facilities.

11 (27) "Person of disability" means a permanently disabled person who
12 is not ambulatory without the assistance of a wheelchair, crutches, or
13 similar devices.

14 (28) "Fish" includes all species classified as game fish or food
15 fish by statute or rule, as well as all fin fish not currently
16 classified as food fish or game fish if such species exist in state
17 waters. The term "fish" includes all stages of development and the
18 bodily parts of fish species.

19 (29) "Raffle" means an activity in which tickets bearing an
20 individual number are sold for not more than twenty-five dollars each
21 and in which a permit or permits are awarded to hunt or for access to
22 hunt big game animals or wild turkeys on the basis of a drawing from
23 the tickets by the person or persons conducting the raffle.

24 (30) "Youth" means a person fifteen years old for fishing and under
25 sixteen years old for hunting.

26 (31) "Senior" means a person seventy years old or older.

27 (32) "License year" means the period of time for which a
28 recreational license is valid. The license year begins April 1st, and
29 ends March 31st.

30 (33) "Saltwater" means those marine waters seaward of river mouths.

31 (34) "Freshwater" means all waters not defined as saltwater
32 including, but not limited to, rivers upstream of the river mouth,
33 lakes, ponds, and reservoirs.

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

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

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

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

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

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

16 (41) "Commercial" means related to or connected with buying,
17 selling, or bartering.

18 (42) "To process" and its derivatives mean preparing or preserving
19 fish, wildlife, or shellfish.

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

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

25 (45) "Fishery" means the taking of one or more particular species
26 of fish or shellfish with particular gear in a particular geographical
27 area.

28 (46) "Limited-entry license" means a license subject to a license
29 limitation program established in chapter 77.70 RCW.

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

35 (48) "Trafficking" means offering, attempting to engage, or
36 engaging in sale, barter, or purchase of fish, shellfish, wildlife, or
37 deleterious exotic wildlife.

38 (49) "Invasive species" means a plant species or a nonnative animal
39 species that either:

1 (a) Causes or may cause displacement of, or otherwise threatens,
2 native species in their natural communities;

3 (b) Threatens or may threaten natural resources or their use in the
4 state;

5 (c) Causes or may cause economic damage to commercial or
6 recreational activities that are dependent upon state waters; or

7 (d) Threatens or harms human health.

8 (50) "Prohibited aquatic animal species" means an invasive species
9 of the animal kingdom that has been classified as a prohibited aquatic
10 animal species by the commission.

11 (51) "Regulated aquatic animal species" means a potentially
12 invasive species of the animal kingdom that has been classified as a
13 regulated aquatic animal species by the commission.

14 (52) "Unregulated aquatic animal species" means a nonnative animal
15 species that has been classified as an unregulated aquatic animal
16 species by the commission.

17 (53) "Unlisted aquatic animal species" means a nonnative animal
18 species that has not been classified as a prohibited aquatic animal
19 species, a regulated aquatic animal species, or an unregulated aquatic
20 animal species by the commission.

21 (54) "Aquatic plant species" means an emergent, submersed,
22 partially submersed, free-floating, or floating-leaving plant species
23 that grows in or near a body of water or wetland.

24 **Sec. 3.** RCW 77.12.020 and 1994 c 264 s 53 are each amended to read
25 as follows:

26 (1) The director shall investigate the habits and distribution of
27 the various species of wildlife native to or adaptable to the habitats
28 of the state. The commission shall determine whether a species should
29 be managed by the department and, if so, classify it under this
30 section.

31 (2) The commission may classify by rule wild animals as game
32 animals and game animals as fur-bearing animals.

33 (3) The commission may classify by rule wild birds as game birds or
34 predatory birds. All wild birds not otherwise classified are protected
35 wildlife.

36 (4) In addition to those species listed in RCW 77.08.020, the
37 commission may classify by rule as game fish other species of the class

1 Osteichthyes that are commonly found in fresh water except those
2 classified as food fish by the director.

3 (5) The director may recommend to the commission that a species of
4 wildlife should not be hunted or fished. The commission may designate
5 species of wildlife as protected.

6 (6) If the director determines that a species of wildlife is
7 seriously threatened with extinction in the state of Washington, the
8 director may request its designation as an endangered species. The
9 commission may designate an endangered species.

10 (7) If the director determines that a species of the animal
11 kingdom, not native to Washington, is dangerous to the environment or
12 wildlife of the state, the director may request its designation as
13 deleterious exotic wildlife. The commission may designate deleterious
14 exotic wildlife.

15 (8) Upon recommendation by the director, the commission may
16 classify nonnative aquatic animal species according to the following
17 categories:

18 (a) Prohibited aquatic animal species: These species are
19 considered by the commission to have a high risk of becoming an
20 invasive species and may not be possessed, imported, purchased, sold,
21 propagated, transported, or released into state waters except as
22 provided in section 4 of this act;

23 (b) Regulated aquatic animal species: These species are considered
24 by the commission to have some beneficial use along with a moderate,
25 but manageable risk of becoming an invasive species, and may not be
26 released into state waters, except as provided in section 4 of this
27 act. The commission shall classify the following commercial
28 aquaculture species as regulated aquatic animal species, and allow
29 their release into state waters pursuant to rule of the commission:
30 Pacific oyster (Crassostrea gigas), kumamoto oyster (Crassostrea
31 sikamea), European flat oyster (Ostrea edulis), eastern oyster
32 (Crassostrea virginica), manila clam (Tapes philippinarum), blue mussel
33 (Mytilus galloprovincialis), and suminoe oyster (Crassostrea
34 ariankenisis);

35 (c) Unregulated aquatic animal species: These species are
36 considered by the commission as having some beneficial use along with
37 a low risk of becoming an invasive species, and are not subject to
38 regulation under this title;

1 (d) Unlisted aquatic animal species: These species are not
2 designated as a prohibited aquatic animal species, regulated aquatic
3 animal species, or unregulated aquatic animal species by the
4 commission, and may not be released into state waters. Upon request,
5 the commission may determine the appropriate category for an unlisted
6 aquatic animal species and classify the species accordingly;

7 (e) This subsection (8) does not apply to the transportation or
8 release of nonnative aquatic animal species by ballast water or ballast
9 water discharge.

10 (9) Upon recommendation by the director, the commission may develop
11 a work plan to eradicate native aquatic species that threaten human
12 health. Priority shall be given to water bodies that the department of
13 health has classified as representing a threat to human health based on
14 the presence of a native aquatic species.

15 NEW SECTION. Sec. 4. A new section is added to chapter 77.15 RCW
16 to read as follows:

17 (1) A person is guilty of unlawful use of a prohibited aquatic
18 animal species if he or she possesses, imports, purchases, sells,
19 propagates, transports, or releases a prohibited aquatic animal species
20 within the state, except as provided in this section.

21 (2) Unless otherwise prohibited by law, a person may:

22 (a) Transport prohibited aquatic animal species to the department,
23 or to another destination designated by the director, in a manner
24 designated by the director, for purposes of identifying a species or
25 reporting the presence of a species;

26 (b) Possess a prohibited aquatic animal species if he or she is in
27 the process of removing it from watercraft or equipment in a manner
28 specified by the department;

29 (c) Release a prohibited aquatic animal species if the species was
30 caught while fishing and it is being immediately returned to the water
31 from which it came; or

32 (d) Possess, transport, or release a prohibited aquatic animal
33 species as the commission may otherwise prescribe.

34 (3) Unlawful use of a prohibited aquatic animal species is a gross
35 misdemeanor. A subsequent violation of subsection (1) of this section
36 within five years is a class C felony.

1 (4) A person is guilty of unlawful release of a regulated aquatic
2 animal species if he or she releases a regulated aquatic animal species
3 into state waters, unless allowed by the commission.

4 (5) Unlawful release of a regulated aquatic animal species is a
5 gross misdemeanor.

6 (6) A person is guilty of unlawful release of an unlisted aquatic
7 animal species if he or she releases an unlisted aquatic animal species
8 into state waters without requesting a commission designation under RCW
9 77.12.020.

10 (7) Unlawful release of an unlisted aquatic animal species is a
11 gross misdemeanor.

12 (8) This section does not apply to the transportation or release of
13 organisms in ballast water.

14 NEW SECTION. **Sec. 5.** A new section is added to chapter 77.12 RCW
15 to read as follows:

16 (1) The commission may designate by rule state waters as infested
17 if the director determines that these waters contain a prohibited
18 aquatic animal species.

19 (2) The commission, in consultation with the department of ecology,
20 may designate state waters as infested if it is determined that these
21 waters contain an invasive aquatic plant species.

22 (3) The department shall work with the aquatic nuisance species
23 committee and its member agencies to create educational materials
24 informing the public of state waters that are infested with invasive
25 species, and advise them of applicable rules and practices designed to
26 reduce the spread of the invasive species infesting the waters.

27 NEW SECTION. **Sec. 6.** A new section is added to chapter 77.12 RCW
28 to read as follows:

29 (1) The director shall create a rapid response plan in cooperation
30 with the aquatic nuisance species committee and its member agencies
31 that describes actions to be taken when a prohibited aquatic animal
32 species is found to be infesting a water body. These actions include
33 eradication or control programs where feasible and containment of
34 infestation where practical through notification, public education, and
35 the enforcement of regulatory programs.

36 (2) The commission may adopt rules to implement the rapid response
37 plan.

1 (3) The director, the department of ecology, and the Washington
2 state parks and recreation commission may post signs at water bodies
3 that are infested with aquatic animal species that are classified as
4 prohibited aquatic animal species under RCW 77.12.020 or with invasive
5 species of the plant kingdom. The signs should identify the prohibited
6 plant and animal species present and warn users of the water body of
7 the hazards and penalties for possessing and transporting these
8 species. Educational signs may be placed at uninfested sites.

9 **Sec. 7.** RCW 77.15.290 and 2001 c 253 s 35 are each amended to read
10 as follows:

11 (1) A person is guilty of unlawful transportation of fish or
12 wildlife in the second degree if the person:

13 (a) Knowingly imports, moves within the state, or exports fish,
14 shellfish, or wildlife in violation of any rule of the commission or
15 the director governing the transportation or movement of fish,
16 shellfish, or wildlife and the transportation does not involve big
17 game, endangered fish or wildlife, deleterious exotic wildlife, or
18 fish, shellfish, or wildlife having a value greater than two hundred
19 fifty dollars; or

20 (b) Possesses but fails to affix or notch a big game transport tag
21 as required by rule of the commission or director.

22 (2) A person is guilty of unlawful transportation of fish or
23 wildlife in the first degree if the person:

24 (a) Knowingly imports, moves within the state, or exports fish,
25 shellfish, or wildlife in violation of any rule of the commission or
26 the director governing the transportation or movement of fish,
27 shellfish, or wildlife and the transportation involves big game,
28 endangered fish or wildlife, deleterious exotic wildlife, or fish,
29 shellfish, or wildlife with a value of two hundred fifty dollars or
30 more; or

31 (b) Knowingly transports shellfish, shellstock, or equipment used
32 in commercial culturing, taking, handling, or processing shellfish
33 without a permit required by authority of this title.

34 (3)(a) Unlawful transportation of fish or wildlife in the second
35 degree is a misdemeanor.

36 (b) Unlawful transportation of fish or wildlife in the first degree
37 is a gross misdemeanor.

1 (4) A person is guilty of unlawful transport of aquatic plants if
2 the person transports aquatic plants on any state or public road,
3 including forest roads, except as provided in this section.

4 (5) Unless otherwise prohibited by law, a person may transport
5 aquatic plants:

6 (a) To the department, or to another destination designated by the
7 director, in a manner designated by the department, for purposes of
8 identifying a species or reporting the presence of a species;

9 (b) When legally obtained for aquarium use, wetland or lakeshore
10 restoration, or ornamental purposes;

11 (c) When transporting a commercial aquatic plant harvester to a
12 suitable location for purposes of removing aquatic plants;

13 (d) In a manner that prevents their unintentional dispersal, to a
14 suitable location for disposal, research, or educational purposes; or

15 (e) As the commission may otherwise prescribe.

16 (6) Unlawful transport of aquatic plants is a misdemeanor.

17 **Sec. 8.** RCW 77.15.080 and 2001 c 306 s 1 and 2001 c 253 s 23 are
18 each reenacted and amended to read as follows:

19 (1) Based upon articulable facts that a person is engaged in
20 fishing, harvesting, or hunting activities, fish and wildlife officers
21 have the authority to temporarily stop the person and check for valid
22 licenses, tags, permits, stamps, or catch record cards, and to inspect
23 all fish, shellfish, seaweed, and wildlife in possession as well as the
24 equipment being used to ensure compliance with the requirements of this
25 title, and may request the person to write his or her signature for
26 comparison with the signature on the license. Failure to comply with
27 the request is prima facie evidence that the person is not the person
28 named on the license. For licenses purchased over the internet or
29 telephone, fish and wildlife officers may require the person, if age
30 eighteen or older, to exhibit a driver's license or other photo
31 identification.

32 (2) Based upon articulable facts that a person is transporting a
33 prohibited aquatic animal species or any aquatic plant, fish and
34 wildlife officers and ex officio fish and wildlife officers have the
35 authority to temporarily stop the person and inspect the watercraft to
36 ensure that the watercraft and associated equipment are not
37 transporting prohibited aquatic animal species or aquatic plants.

1 NEW SECTION. **Sec. 9.** In consultation with the aquatic nuisance
2 species committee, the director of the department of fish and wildlife
3 and the chief of the state patrol must jointly develop a plan to
4 inspect watercraft entering the state to prevent the introduction of
5 invasive aquatic species. The plan shall be provided to the
6 legislature by December 2003.

 Passed the Senate March 12, 2002.

 Passed the House March 6, 2002.

 Approved by the Governor April 1, 2002.

 Filed in Office of Secretary of State April 1, 2002.