

**E2SSB 5923** - H COMM AMD

By Committee on Agriculture & Natural Resources

ADOPTED AS AMENDED 04/06/2007

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 43.43.400 and 2005 c 464 s 5 are each amended to read  
4 as follows:

5 (1) The definitions in this subsection apply throughout this  
6 section unless the context clearly requires otherwise:

7 (a) "Aquatic invasive species" means any invasive, prohibited,  
8 regulated, unregulated, or unlisted aquatic animal or plant species as  
9 defined under RCW 77.08.010 (49) through (54), aquatic noxious weeds as  
10 defined under RCW 17.26.020(5)(c), and aquatic nuisance species as  
11 defined under RCW 77.60.130(1).

12 (b) "Recreational and commercial watercraft" includes the boat, as  
13 well as equipment used to transport the boat, and any auxiliary  
14 equipment such as attached or detached outboard motors.

15 (2) The aquatic invasive species enforcement account is created in  
16 the state treasury. Moneys directed to the account from RCW 88.02.050  
17 must be deposited in the account. Expenditures from the account may  
18 only be used as provided in this section. Moneys in the account may be  
19 spent only after appropriation.

20 ~~((+2))~~ (3) Funds in the aquatic invasive species enforcement  
21 account may be appropriated to the Washington state patrol and the  
22 department of fish and wildlife to develop an aquatic invasive species  
23 enforcement program for recreational and commercial watercraft, which  
24 includes equipment used to transport the watercraft and auxiliary  
25 equipment such as attached or detached outboard motors. Funds must be  
26 expended as follows:

27 (a) By the Washington state patrol, to inspect recreational and  
28 commercial watercraft that are required to stop at port of entry weigh  
29 stations managed by the Washington state patrol. The watercraft must

1 be inspected for the presence of (~~zebra mussels and other~~) aquatic  
2 invasive species; and

3 (b) By the department of fish and wildlife to:

4 (i) Establish random check stations, (~~in conjunction with the~~  
5 ~~department of fish and wildlife,~~) to inspect recreational and  
6 commercial watercraft (~~in areas of high boating activity~~) as provided  
7 for in RCW 77.12.879(3);

8 (ii) Inspect or delegate inspection of recreational and commercial  
9 watercraft. If the department conducts the inspection, there will be  
10 no cost to the person requesting the inspection;

11 (iii) Provide training to all department employees that are  
12 deployed in the field to inspect recreational and commercial  
13 watercraft; and

14 (iv) Provide an inspection receipt verifying that the watercraft is  
15 not contaminated after the watercraft has been inspected at a check  
16 station or has been inspected at the request of the owner of the  
17 recreational or commercial watercraft. The inspection receipt is valid  
18 until the watercraft is used again.

19 ~~((3))~~ (4) The Washington state patrol and the department of fish  
20 and wildlife shall submit a biennial report to the appropriate  
21 legislative committees describing the actions taken to implement this  
22 section along with suggestions on how to better fulfill the intent of  
23 chapter 464, Laws of 2005. The first report is due December 1, 2007.

24 **Sec. 2.** RCW 77.08.010 and 2005 c 104 s 1 are each amended to read  
25 as follows:

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

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

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

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

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

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

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

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

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

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

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

30 (11) "Closed season" means all times, manners of taking, and places  
31 or waters other than those established by rule of the commission as an  
32 open season. "Closed season" also means all hunting, fishing, taking,  
33 or possession of game animals, game birds, game fish, food fish, or  
34 shellfish that do not conform to the special restrictions or physical  
35 descriptions established by rule of the commission as an open season or  
36 that have not otherwise been deemed legal to hunt, fish, take, harvest,  
37 or possess by rule of the commission as an open season.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (36) "Offshore waters" means marine waters of the Pacific Ocean  
34 outside the territorial boundaries of the state, including the marine  
35 waters of other states and countries.

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

1 (38) "Resident" means:

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

7 (b) A person age eighteen or younger who does not qualify as a  
8 resident under (a) of this subsection, but who has a parent that  
9 qualifies as a resident under (a) of this subsection.

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

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

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

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

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

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

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

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

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

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

1 (49) "Invasive species" means a plant species or a nonnative animal  
2 species that either:

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

5 (b) Threatens or may threaten natural resources or their use in the  
6 state;

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

9 (d) Threatens or harms human health.

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

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

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

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

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

26 (55) "Retail-eligible species" means commercially harvested salmon,  
27 crab, and sturgeon.

28 (56) "Aquatic invasive species" means any invasive, prohibited,  
29 regulated, unregulated, or unlisted aquatic animal or plant species as  
30 defined under subsections (49) through (54) of this section, aquatic  
31 noxious weeds as defined under RCW 17.26.020(5)(c), and aquatic  
32 nuisance species as defined under RCW 77.60.130(1).

33 (57) "Recreational and commercial watercraft" includes the boat, as  
34 well as equipment used to transport the boat, and any auxiliary  
35 equipment such as attached or detached outboard motors.

36 **Sec. 3.** RCW 77.12.879 and 2005 c 464 s 3 are each amended to read  
37 as follows:

1 (1) The aquatic invasive species prevention account is created in  
2 the state treasury. Moneys directed to the account from RCW 88.02.050  
3 must be deposited in the account. Expenditures from the account may  
4 only be used as provided in this section. Moneys in the account may be  
5 spent only after appropriation.

6 (2) Funds in the aquatic invasive species prevention account may be  
7 appropriated to the department to develop an aquatic invasive species  
8 prevention program for recreational and commercial watercraft. Funds  
9 must be expended as follows:

10 (a) To inspect recreational and commercial watercraft(~~(, watercraft~~  
11 ~~trailers, and outboard motors at selected boat launching sites)~~);

12 (b) To educate general law enforcement officers on how to enforce  
13 state laws relating to preventing the spread of aquatic invasive  
14 species;

15 (c) To evaluate and survey the risk posed by ~~((marine))~~  
16 recreational and commercial watercraft in spreading aquatic invasive  
17 species into Washington state waters;

18 (d) To evaluate the risk posed by float planes in spreading aquatic  
19 invasive species into Washington state waters; and

20 (e) To implement an aquatic invasive species early detection and  
21 rapid response plan. The plan must address the treatment and immediate  
22 response to the introduction to Washington waters of aquatic invasive  
23 species. Agency and public review of the plan must be conducted under  
24 chapter 43.21C RCW, the state environmental policy act. If the  
25 implementation measures or actions would have a probable significant  
26 adverse environmental impact, a detailed statement under chapter 43.21C  
27 RCW must be prepared on the plan.

28 (3) Funds in the aquatic invasive species enforcement account  
29 created in RCW 43.43.400 may be appropriated to the department and  
30 Washington state patrol to develop an aquatic invasive species  
31 enforcement program for recreational and commercial watercraft. The  
32 department shall provide training to Washington state patrol employees  
33 working at port of entry weigh stations on how to inspect recreational  
34 and commercial watercraft for the presence of ~~((zebra mussels and~~  
35 ~~other))~~ aquatic invasive species. The department ~~((shall also~~  
36 ~~cooperatively work with the Washington state patrol to set up random~~  
37 ~~check stations to inspect watercraft at areas of high boating~~  
38 ~~activity))~~ is authorized to require persons transporting recreational



1 and commercial watercraft to stop at check stations. Check stations  
2 must be plainly marked by signs, operated by at least one uniformed  
3 fish and wildlife officer, and operated in a safe manner. Any person  
4 stopped at a check station who possesses a recreational or commercial  
5 watercraft that is contaminated with aquatic invasive species is exempt  
6 from the criminal penalties found in RCW 77.15.253 and 77.15.290, and  
7 forfeiture under RCW 77.15.070, if that person complies with all  
8 department directives for the proper decontamination of the watercraft  
9 and equipment.

10 (4) The department shall submit a biennial report to the  
11 appropriate legislative committees describing the actions taken to  
12 implement this section along with suggestions on how to better fulfill  
13 the intent of chapter 464, Laws of 2005. The first report is due  
14 December 1, 2007.

15 NEW SECTION. Sec. 4. A new section is added to chapter 77.12 RCW  
16 to read as follows:

17 (1) The department shall adopt rules governing how and when the  
18 owners of recreational and commercial watercraft may request an  
19 inspection of the watercraft for the presence of aquatic invasive  
20 species. The department may coordinate with other states on inspection  
21 requirements and may determine when other state inspections meet  
22 Washington standards.

23 (2) The department shall develop and post signs warning vessel  
24 owners of the threat of aquatic invasive species, the penalties  
25 associated with introduction of an aquatic invasive species, and the  
26 contact information for obtaining a free inspection. The signs should  
27 provide enough information for the public to discern whether the vessel  
28 has been operated in an area that would warrant the need for an  
29 inspection. The department shall consult with the state patrol and the  
30 department of transportation regarding proper placement and  
31 authorization for sign posting.

32 (3) All port districts, privately or publicly owned marinas, state  
33 parks, and all state agencies or political subdivisions that own or  
34 lease a boat launch must display a sign provided by the department as  
35 described under subsection (2) of this section. Signs must be posted  
36 in a location near the boat launch to provide maximum visibility to the  
37 public.

1 (4) The department must coordinate with the Washington state parks  
2 and recreation commission to include such information in all boating  
3 publications provided to the public. The department shall also include  
4 the information on the department's internet site.

5 **Sec. 5.** RCW 77.15.253 and 2002 c 281 s 4 are each amended to read  
6 as follows:

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

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

12 (a) Transport prohibited aquatic animal species to the department,  
13 or to another destination designated by the director, in a manner  
14 designated by the director, for purposes of identifying a species or  
15 reporting the presence of a species;

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

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

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

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

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

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

32 (6) A person is guilty of unlawful release of an unlisted aquatic  
33 animal species if he or she releases an unlisted aquatic animal species  
34 into state waters without requesting a commission designation under RCW  
35 77.12.020.

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

1 (8) This section does not apply to:

2 (a) The transportation or release of organisms in ballast water;

3 (b) A person stopped at an aquatic invasive species check station  
4 who possesses a recreational or commercial watercraft that is  
5 contaminated with an aquatic invasive species, if that person complies  
6 with all department directives for the proper decontamination of the  
7 watercraft and equipment; or

8 (c) A person who has voluntarily submitted a recreational or  
9 commercial watercraft for inspection by the department and has received  
10 a receipt verifying that the watercraft has not been contaminated since  
11 its last use.

12 **Sec. 6.** RCW 77.15.290 and 2002 c 281 s 7 are each amended to read  
13 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (e) As the commission may otherwise prescribe.

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

21 (7) This section does not apply to: (a) Any person stopped at an  
22 aquatic invasive species check station who possesses a recreational or  
23 commercial watercraft that is contaminated with an aquatic invasive  
24 species if that person complies with all department directives for the  
25 proper decontamination of the watercraft and equipment; or (b) any  
26 person who has voluntarily submitted a recreational or commercial  
27 watercraft for inspection by the department or its designee and has  
28 received a receipt verifying that the watercraft has not been  
29 contaminated since its last use.

30 NEW SECTION. Sec. 7. A new section is added to chapter 77.15 RCW  
31 to read as follows:

32 (1) A person is guilty of unlawfully avoiding aquatic invasive  
33 species check stations if the person fails to:

34 (a) Obey check station signs; or

35 (b) Stop and report at a check station if directed to do so by a  
36 uniformed fish and wildlife officer.

1 (2) Unlawfully avoiding aquatic invasive species check stations is  
2 a gross misdemeanor.

3 NEW SECTION. **Sec. 8.** A new section is added to chapter 77.12 RCW  
4 to read as follows:

5 The department shall develop a programmatic environmental impact  
6 statement prepared pursuant to chapter 43.21C RCW, to address the  
7 department's aquatic invasive species early detection and rapid  
8 response plan created under RCW 77.12.879(2). The plan shall address  
9 the treatment and immediate response to the introduction to Washington  
10 waters of aquatic invasive species.

11 **Sec. 9.** RCW 77.120.010 and 2000 c 108 s 2 are each amended to read  
12 as follows:

13 The definitions in this section apply throughout this chapter  
14 unless the context clearly requires otherwise.

15 (1) "Ballast tank" means any tank or hold on a vessel used for  
16 carrying ballast water, whether or not the tank or hold was designed  
17 for that purpose.

18 (2) "Ballast water" means any water and matter taken on board a  
19 vessel to control or maintain trim, draft, stability, or stresses of  
20 the vessel, without regard to the manner in which it is carried.

21 (3) "Empty/refill exchange" means to pump out, until the tank is  
22 empty or as close to empty as the master or operator determines is  
23 safe, the ballast water taken on in ports, estuarine, or territorial  
24 waters, and then refilling the tank with open sea waters.

25 (4) "Exchange" means to replace the water in a ballast tank using  
26 either flow through exchange, empty/refill exchange, or other exchange  
27 methodology recommended or required by the United States coast guard.

28 (5) "Flow through exchange" means to flush out ballast water by  
29 pumping in midocean water at the bottom of the tank and continuously  
30 overflowing the tank from the top until three full volumes of water  
31 have been changed to minimize the number of original organisms  
32 remaining in the tank.

33 (6) "Nonindigenous species" means any species or other viable  
34 biological material that enters an ecosystem beyond its natural range.

35 (7) "Open sea exchange" means an exchange that occurs fifty or more

1 nautical miles offshore. If the United States coast guard requires a  
2 vessel to conduct an exchange further offshore, then that distance is  
3 the required distance for purposes of compliance with this chapter.

4 (8) "Recognized marine trade association" means those trade  
5 associations in Washington state that promote improved ballast water  
6 management practices by educating their members on the provisions of  
7 this chapter, participating in regional ballast water coordination  
8 through the Pacific ballast water group, assisting the department in  
9 the collection of ballast water exchange forms, and the monitoring of  
10 ballast water. This includes members of the Puget Sound marine  
11 committee for Puget Sound and the Columbia river steamship operators  
12 association for the Columbia river.

13 (9) "Sediments" means any matter settled out of ballast water  
14 within a vessel.

15 (10) "Untreated ballast water" includes exchanged or unexchanged  
16 ballast water that has not undergone treatment.

17 (11) "Vessel" means a (~~self-propelled~~) ship (~~in-commerce~~),  
18 boat, barge, or other floating craft of three hundred gross tons or  
19 more, United States and foreign, carrying, or capable of carrying,  
20 ballast water into the coastal waters of the state after operating  
21 outside of the coastal waters of the state, except those vessels  
22 described in RCW 77.120.020.

23 (12) "Voyage" means any transit by a vessel destined for any  
24 Washington port.

25 (13) "Waters of the state" means any surface waters, including  
26 internal waters contiguous to state shorelines within the boundaries of  
27 the state.

28 **Sec. 10.** RCW 77.120.020 and 2000 c 108 s 3 are each amended to  
29 read as follows:

30 (1) This chapter applies to all vessels (~~carrying ballast water~~)  
31 transiting into the waters of the state from a voyage, except:

32 (a) A vessel of the United States department of defense or United  
33 States coast guard subject to the requirements of section 1103 of the  
34 national invasive species act of 1996, or any vessel of the armed  
35 forces, as defined in 33 U.S.C. Sec. 1322(a)(14), that is subject to  
36 the uniform national discharge standards for vessels of the armed  
37 forces under 33 U.S.C. Sec. 1322(n);

1 (b) A vessel (~~(i)~~) that discharges ballast water or sediments  
2 only at the location where the ballast water or sediments originated,  
3 if the ballast water or sediments do not mix with ballast water or  
4 sediments from areas other than open sea waters(~~(i or ii) that does~~  
5 ~~not discharge ballast water in Washington waters~~); and

6 (c) A vessel in innocent passage, merely traversing the (~~internal~~  
7 ~~waters of Washington in the Strait of Juan de Fuca, bound for a port in~~  
8 ~~Canada,~~) territorial sea of the United States and not entering or  
9 departing a United States port, (~~or a vessel in innocent passage,~~  
10 ~~which is a vessel merely traversing the territorial sea of the United~~  
11 ~~States and not entering or departing a United States port,~~) or not  
12 navigating the internal waters of the United States(~~i and~~

13 ~~(d) A crude oil tanker that does not exchange or discharge ballast~~  
14 ~~water into the waters of the state~~), and that does not discharge  
15 ballast water into the waters of the state.

16 (2) This chapter does not authorize the discharge of oil or noxious  
17 liquid substances in a manner prohibited by state, federal, or  
18 international laws or regulations. Ballast water containing oil,  
19 noxious liquid substances, or any other pollutant shall be discharged  
20 in accordance with the applicable requirements.

21 (3) The master or operator in charge of a vessel is responsible for  
22 the safety of the vessel, its crew, and its passengers. Nothing in  
23 this chapter relieves the master or operator in charge of a vessel of  
24 the responsibility for ensuring the safety and stability of the vessel  
25 or the safety of the crew and passengers.

26 **Sec. 11.** RCW 77.120.030 and 2004 c 227 s 3 are each amended to  
27 read as follows:

28 (1) The owner or operator in charge of any vessel covered by this  
29 chapter is required to ensure that the vessel under their ownership or  
30 control does not discharge ballast water into the waters of the state  
31 except as authorized by this section.

32 (~~(1) Discharge into waters of the state is authorized if the~~  
33 ~~vessel has conducted an open sea exchange of ballast water. A vessel~~  
34 ~~is exempt from this requirement if the vessel's master reasonably~~  
35 ~~determines that such a ballast water exchange operation will threaten~~  
36 ~~the safety of the vessel or the vessel's crew, or is not feasible due~~  
37 ~~to vessel design limitations or equipment failure. If a vessel relies~~

1 ~~on this exemption, then it may discharge ballast water into waters of~~  
2 ~~the state, subject to any requirements of treatment under subsection~~  
3 ~~(2) of this section and subject to RCW 77.120.040.)~~

4 (2) ~~((After July 1, 2007,))~~ Discharge of ballast water into waters  
5 of the state is authorized only if there has been an open sea exchange,  
6 or if the vessel has treated its ballast water, to meet standards set  
7 by the department consistent with applicable state and federal laws.  
8 ~~((When weather or extraordinary circumstances make access to treatment~~  
9 ~~unsafe to the vessel or crew, the master of a vessel may delay~~  
10 ~~compliance with any treatment required under this subsection until it~~  
11 ~~is safe to complete the treatment.~~

12 ~~(3) Masters, owners, operators, or persons in charge shall submit~~  
13 ~~to the department an interim ballast water management report by July 1,~~  
14 ~~2006, in the form and manner prescribed by the department. The report~~  
15 ~~shall describe actions needed to implement the ballast water~~  
16 ~~requirements in subsection (2) of this section, including treatment~~  
17 ~~methods applicable to the class of the vessel. Reports may include a~~  
18 ~~statement that there are no treatment methods applicable to the vessel~~  
19 ~~for which the report is being submitted.~~

20 ~~(4) The ballast water work group created in section 1, chapter 282,~~  
21 ~~Laws of 2002 shall develop recommendations for the interim ballast~~  
22 ~~water management report. The recommendations must include, but are not~~  
23 ~~limited to:~~

24 ~~(a) Actions that the vessel owner or operator will take to~~  
25 ~~implement the ballast water requirements in subsection (2) of this~~  
26 ~~section, including treatment methods applicable to the class of the~~  
27 ~~vessel;~~

28 ~~(b) Necessary plan elements when there are not treatment methods~~  
29 ~~applicable to the vessel for which the report is being submitted, or~~  
30 ~~which would meet the requirements of this chapter; and~~

31 ~~(c) The method, form, and content of reporting to be used for such~~  
32 ~~reports.)~~

33 (3) The department, in consultation with the ballast water work  
34 group, or similar collaborative forum, shall adopt by rule standards  
35 for the discharge of ballast water into the waters of the state and  
36 their implementation timelines. The standards are intended to ensure  
37 that the discharge of ballast water poses minimal risk of introducing  
38 nonindigenous species. In developing these standards, the department



1 shall consider the extent to which the requirement is technologically  
2 and practically feasible. Where practical and appropriate, the  
3 standards must be compatible with standards set by the United States  
4 coast guard, the federal clean water act (33 U.S.C. Sec. 1251-1387), or  
5 the international maritime organization.

6 (4) The master, operator, or person in charge of a vessel is not  
7 required to conduct an open sea exchange or treatment of ballast water  
8 if the master, operator, or person in charge of a vessel determines  
9 that the operation would threaten the safety of the vessel, its crew,  
10 or its passengers, because of adverse weather, vessel design  
11 limitations, equipment failure, or any other extraordinary conditions.  
12 A master, operator, or person in charge of a vessel who relies on this  
13 exemption must file documentation defined by the department, subject  
14 to: (a) Payment of a fee not to exceed five thousand dollars; (b)  
15 discharging only the minimal amount of ballast water operationally  
16 necessary; (c) ensuring that ballast water records accurately reflect  
17 any reasons for not complying with the mandatory requirements; and (d)  
18 any other requirements identified by the department by rule as provided  
19 in subsections (3) and (6) of this section.

20 (5) For treatment technologies requiring shipyard modification  
21 ((that cannot reasonably be performed prior to July 1, 2007, the  
22 department shall provide the vessel owner or operator with an extension  
23 to the first scheduled drydock or shipyard period following July 1,  
24 2007)), the department may enter into a compliance plan with the vessel  
25 owner. The compliance plan must include a timeline consistent with  
26 drydock and shipyard schedules for completion of the modification. The  
27 department shall adopt rules for compliance plans under this  
28 subsection.

29 (6) For an exemption claimed in subsection (4) of this section, the  
30 department shall adopt rules for defining exemption conditions,  
31 requirements, compliance plans, or alternative ballast water management  
32 strategies to meet the intent of this section.

33 ((+6)) (7) The department shall make every effort to align ballast  
34 water standards with adopted international and federal standards while  
35 ensuring that the goals of this chapter are met.

36 ((+7)) (8) The requirements of this section do not apply to a  
37 vessel discharging ballast water or sediments that originated solely

1 within the waters of Washington state, the Columbia river system, or  
2 the internal waters of British Columbia south of latitude fifty degrees  
3 north, including the waters of the Straits of Georgia and Juan de Fuca.

4 ~~((8))~~ (9) Open sea exchange is an exchange that occurs fifty or  
5 more nautical miles offshore. If the United States coast guard  
6 requires a vessel to conduct an exchange further offshore, then that  
7 distance is the required distance for purposes of compliance with this  
8 chapter.

9 **Sec. 12.** 2004 c 227 s 2 (uncodified) is amended to read as  
10 follows:

11 ~~((The director of the department of fish and wildlife must  
12 establish the))~~ A ballast water work group is created to assist the  
13 department in the implementation of this chapter. The director shall  
14 make appointments to the work group from the names provided by the  
15 entities identified in this section.

16 (2) The ballast water work group consists of the following  
17 individuals:

18 (a) One staff person from the governor's executive policy office.  
19 This person must act as chair of the ballast water work group;

20 (b) Two representatives from the ~~((Puget Sound steamship  
21 operators))~~ Pacific merchant shipping association;

22 (c) Two representatives from the Columbia river steamship  
23 operators;

24 (d) Three representatives from the Washington public ports, one of  
25 whom must be a marine engineer;

26 (e) Two representatives from the petroleum transportation industry;

27 (f) One representative from the Puget Sound water quality action  
28 team;

29 (g) Two representatives from the environmental community;

30 (h) One representative of the shellfish industry;

31 (i) One representative of the tribes;

32 (j) One representative of maritime labor; ~~((and))~~

33 (k) One representative from the department ~~((of fish and  
34 wildlife));~~

35 (l) One representative from the department of ecology;

36 (m) One representative from the cruise ship industry; and

37 (n) One representative from the department of natural resources.

1           (3) ~~The ballast water work group must ((study, and provide a report~~  
2 ~~to the legislature by December 15, 2006, the following issues))~~ begin  
3 operation immediately upon the effective date of this section. The  
4 Puget Sound action team or its successor agency must provide staff for  
5 the ballast water work group from existing personnel within the action  
6 team. The ballast water work group must:

7           (a) ~~((All issues relating to ballast water technology, including~~  
8 ~~exchange and treatment methods, management plans, the associated costs,~~  
9 ~~and the availability of feasible and proven ballast water treatment~~  
10 ~~technologies that could be cost-effectively installed on vessels that~~  
11 ~~typically call on Washington ports;~~

12           (b) ~~The services needed by the industry and the state to protect~~  
13 ~~the marine environment, including penalties and enforcement;~~

14           (c) ~~The costs associated with, and possible funding methods for,~~  
15 ~~implementing the ballast water program;~~

16           (d) ~~Consistency with federal and international standards, and~~  
17 ~~identification of gaps between those standards, and the need for~~  
18 ~~additional measures, if any, to meet the goals of this chapter;~~

19           (e) ~~Describe how the costs of treatment required as of July 1,~~  
20 ~~2007, will be substantially equivalent among ports where treatment is~~  
21 ~~required;~~

22           (f) ~~Describe how the states of Washington and Oregon are~~  
23 ~~coordinating their efforts for ballast water management in the Columbia~~  
24 ~~river system; and~~

25           (g) ~~Describe how the states of Washington, Oregon, and California~~  
26 ~~and the province of British Columbia are coordinating their efforts for~~  
27 ~~ballast water management on the west coast.~~

28           (4) ~~The ballast water work group must begin operation immediately~~  
29 ~~upon the effective date of this section. The Puget Sound water quality~~  
30 ~~action team must provide staff for the ballast water work group. The~~  
31 ~~staff must come from existing personnel within the team))~~ Provide a  
32 report to the legislature by July 1, 2009, on the progress of the work  
33 group on the tasks listed in this section, and report on compliance  
34 with this act, and recommendations for improvements, if any, to the  
35 ballast water program;

36           (b) Work with the state of Oregon to develop a consistent,  
37 coordinated, and enforceable ballast water management program for the  
38 Columbia river that is acceptable to both states;

1 (c) Advise the department on potential strategies to establish and  
2 maintain an inventory of introduced nonindigenous plants and animals in  
3 state waters in and adjacent to ports, harbors, oil transfer  
4 facilities, grain elevators, and other ship-berthing facilities and  
5 evaluate the effectiveness of the program and a program to assess  
6 vessel-specific risks;

7 (d) Help the department review the needs of the ballast water  
8 program, including research investments, and identify unmet needs, and  
9 work through the Puget Sound action team's and the department's  
10 internal budget development process to secure needed funds;

11 (e) Help the department develop and align the state program with  
12 national and regional ballast water management programs;

13 (f) Assist the department by developing a workable technical and  
14 financial assistance program to support the shipping industry to comply  
15 with state ballast water laws and rules;

16 (g) Work with the United States coast guard and the department of  
17 ecology to improve coordination and integration of vessel inspection  
18 procedures among agencies that board and inspect vessels and identify  
19 ways to minimize apparent duplication of effort, work more effectively  
20 with vessel masters and crew, and recommend changes to state law to  
21 streamline the program, if needed;

22 (h) Outline funding, policy, and program recommendations to support  
23 the state's management program;

24 (i) Coordinate, in association with the departments of fish and  
25 wildlife, ecology, and natural resources, the Puget Sound action team,  
26 the Washington invasive species council, and other interested parties,  
27 the development of a management approach for nonballast water ship  
28 vectors as a source of nonindigenous species such as ship hull fouling,  
29 sea chests and equipment, and vessels equipped with ballast tanks that  
30 carry no ballast onboard;

31 (j) Review and provide comment on proposed federal legislation,  
32 international and regional programs, and other policy arenas;

33 (k) Harmonize the state ballast water program with western coastal  
34 states, British Columbia, and Canada;

35 (l) Work with the department's science advisory panel to develop a  
36 science research plan and estimated costs to answer key research and  
37 management questions;

1 (m) Provide recommendations and technical information to assist the  
2 department in determining if and when it is necessary or advisable to  
3 adjust rules and guidance for the ballast water management program to  
4 achieve resource goals and objectives;

5 (n) Coordinate, in association with the department, the departments  
6 of ecology and natural resources, the Puget Sound action team, the  
7 Washington invasive species council, and other interested parties,  
8 recommendations for a management approach for treatment of unexchanged  
9 ballast water when vessels claim an exemption under RCW 77.120.030.  
10 The recommendations may consider shore-based management, emergency  
11 chemical application, or other treatment methods that meet state and  
12 federal requirements. The recommendations may also address potential  
13 liability issues relating to discharge of ballast water. The ballast  
14 water work group shall invite the United States environmental  
15 protection agency and the United States coast guard to participate in  
16 this evaluation. The ballast water work group shall provide a report  
17 of the recommendations to the legislature by July 1, 2008;

18 (o) Other responsibilities, as necessary.

19 ~~((+5))~~ (4) The director must also monitor the activities of the  
20 task force created by the state of Oregon in 2001 Or. Laws 722,  
21 concerning ballast water management. The director shall provide the  
22 ballast water work group with periodic updates of the Oregon task  
23 force's efforts at developing a ballast water management system.

24 ~~((+6)(a) The ballast water work group expires June 30, 2007.~~

25 ~~(b) This section expires June 30, 2007.)~~

26 **Sec. 13.** RCW 77.120.070 and 2000 c 108 s 8 are each amended to  
27 read as follows:

28 ~~((Except as limited by subsection (2) or (3) of this section,))~~  
29 The department may establish by rule schedules for any penalty allowed  
30 in this chapter. The schedules may provide for the incremental  
31 assessment of a penalty based on criteria established by rule.

32 (2) The director or the director's designee may impose a civil  
33 penalty or warning for a violation of the requirements of this chapter  
34 on the owner or operator in charge of a vessel who fails to comply with  
35 the requirements imposed under RCW 77.120.030 and 77.120.040. The  
36 penalty shall not exceed ((five)) twenty-seven thousand five hundred  
37 dollars for each day of a continuing violation. In determining the

1 amount of a civil penalty, the department shall set standards by rule  
2 that consider if the violation was intentional, negligent, or without  
3 any fault, and shall consider the quality and nature of risks created  
4 by the violation. The owner or operator subject to such a penalty may  
5 contest the determination by requesting an adjudicative proceeding  
6 within twenty days. Any determination not timely contested is final  
7 and may be reduced to a judgment enforceable in any court with  
8 jurisdiction. If the department prevails using any judicial process to  
9 collect a penalty under this section, the department shall also be  
10 awarded its costs and reasonable attorneys' fees.

11 ~~((2) The civil penalty for a violation of reporting requirements~~  
12 ~~of RCW 77.120.040 shall not exceed five hundred dollars per violation.~~

13 ~~(3) Any owner or operator who knowingly, and with intent to~~  
14 ~~deceive, falsifies a ballast water management report form is liable for~~  
15 ~~a civil penalty in an amount not to exceed five thousand dollars per~~  
16 ~~violation, in addition to any criminal liability that may attach to the~~  
17 ~~filing of false documents.~~

18 ~~(4))~~ (3) The department, in cooperation with the United States  
19 coast guard, may enforce the requirements of this chapter.

20 NEW SECTION. Sec. 14. A new section is added to chapter 77.120  
21 RCW to read as follows:

22 The department may assess a fee for any exemptions allowed under  
23 this chapter. Such a fee may not exceed five thousand dollars. The  
24 department may establish by rule schedules for any fee allowed in this  
25 chapter. The schedules may provide for the incremental assessment of  
26 a penalty based on criteria established by rule.

27 NEW SECTION. Sec. 15. A new section is added to chapter 77.120  
28 RCW to read as follows:

29 (1) The ballast water management account is created in the state  
30 treasury. All receipts from legislative appropriations, gifts, grants,  
31 donations, penalties, and fees received under this chapter must be  
32 deposited into the account.

33 (2) Moneys in the account may be spent only after appropriation.  
34 Expenditures from the account may be used only to carry out the  
35 purposes of this chapter or support the goals of this chapter through  
36 research and monitoring except:

1 (a) Expenditures may not be used for the salaries of permanent  
2 department employees; and

3 (b) Penalties deposited into the account may be used, in  
4 consultation with the ballast water work group created in section 12 of  
5 this act, only to support basic and applied research and carry out  
6 education and outreach related to the state's ballast water management.

7 NEW SECTION. **Sec. 16.** A new section is added to chapter 77.120  
8 RCW to read as follows:

9 The department may issue a special operating authorization for  
10 passenger vessels conducting or assisting in research and testing  
11 activities to determine the presence of invasive species in ballast  
12 water collected in the waters of southeast Alaska north of latitude  
13 fifty-four degrees thirty minutes north to sixty-one degrees ten  
14 minutes north, extending to longitude one hundred forty-nine degrees  
15 thirty minutes west. Such testing and research shall be reviewed by  
16 the ballast water work group, who may make recommendations to the  
17 department. The department may adopt rules for defining special  
18 operating authorization conditions, requirements, limitations, and fees  
19 as necessary to implement this section, consistent with the intent of  
20 this chapter.

21 NEW SECTION. **Sec. 17.** Section 12 of this act is added to chapter  
22 77.120 RCW.

23 NEW SECTION. **Sec. 18.** The following acts or parts of acts are  
24 each repealed:

- 25 (1) RCW 77.120.060 (Report to legislature--Results of chapter) and  
26 2002 c 282 s 4 & 2000 c 108 s 7;
- 27 (2) RCW 77.120.080 (Legislative review of chapter--Recommendations)  
28 and 2000 c 108 s 9; and
- 29 (3) RCW 77.120.090 (Ballast water information system--Improvements)  
30 and 2002 c 282 s 5."

31 Correct the title.

--- END ---