

E2SSB 5923 - H COMM AMD

By Committee on Agriculture & Natural Resources

ADOPTED AND ENGROSSED 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 **Sec. 8.** RCW 77.120.010 and 2000 c 108 s 2 are each amended to read
4 as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

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

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

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

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

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

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

27 (7) "Open sea exchange" means an exchange that occurs fifty or more
28 nautical miles offshore. If the United States coast guard requires a
29 vessel to conduct an exchange further offshore, then that distance is
30 the required distance for purposes of compliance with this chapter.

31 (8) "Recognized marine trade association" means those trade
32 associations in Washington state that promote improved ballast water
33 management practices by educating their members on the provisions of
34 this chapter, participating in regional ballast water coordination
35 through the Pacific ballast water group, assisting the department in
36 the collection of ballast water exchange forms, and the monitoring of

1 ballast water. This includes members of the Puget Sound marine
2 committee for Puget Sound and the Columbia river steamship operators
3 association for the Columbia river.

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

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

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

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

16 (13) "Waters of the state" means any surface waters, including
17 internal waters contiguous to state shorelines within the boundaries of
18 the state.

19 **Sec. 9.** RCW 77.120.020 and 2000 c 108 s 3 are each amended to read
20 as follows:

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

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

29 (b) A vessel ~~((i))~~ that discharges ballast water or sediments
30 only at the location where the ballast water or sediments originated,
31 if the ballast water or sediments do not mix with ballast water or
32 sediments from areas other than open sea waters~~((i or (ii) that does~~
33 ~~not discharge ballast water in Washington waters))~~; and

34 (c) A vessel in innocent passage, merely traversing the ~~((internal~~
35 ~~waters of Washington in the Strait of Juan de Fuca, bound for a port in~~
36 ~~Canada,))~~ territorial sea of the United States and not entering or
37 departing a United States port, ~~((or a vessel in innocent passage,~~

1 ~~which is a vessel merely traversing the territorial sea of the United~~
2 ~~States and not entering or departing a United States port,~~) or not
3 navigating the internal waters of the United States(~~(; and~~

4 ~~(d) A crude oil tanker that does not exchange or discharge ballast~~
5 ~~water into the waters of the state)), and that does not discharge~~

6 ballast water into the waters of the state.
7 (2) This chapter does not authorize the discharge of oil or noxious
8 liquid substances in a manner prohibited by state, federal, or
9 international laws or regulations. Ballast water containing oil,
10 noxious liquid substances, or any other pollutant shall be discharged
11 in accordance with the applicable requirements.

12 (3) The master or operator in charge of a vessel is responsible for
13 the safety of the vessel, its crew, and its passengers. Nothing in
14 this chapter relieves the master or operator in charge of a vessel of
15 the responsibility for ensuring the safety and stability of the vessel
16 or the safety of the crew and passengers.

17 **Sec. 10.** RCW 77.120.030 and 2004 c 227 s 3 are each amended to
18 read as follows:

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

23 ~~((1) Discharge into waters of the state is authorized if the~~
24 ~~vessel has conducted an open sea exchange of ballast water. A vessel~~
25 ~~is exempt from this requirement if the vessel's master reasonably~~
26 ~~determines that such a ballast water exchange operation will threaten~~
27 ~~the safety of the vessel or the vessel's crew, or is not feasible due~~
28 ~~to vessel design limitations or equipment failure. If a vessel relies~~
29 ~~on this exemption, then it may discharge ballast water into waters of~~
30 ~~the state, subject to any requirements of treatment under subsection~~
31 ~~(2) of this section and subject to RCW 77.120.040.))~~

32 (2) ~~((After July 1, 2007,))~~ Discharge of ballast water into waters
33 of the state is authorized only if there has been an open sea exchange,
34 or if the vessel has treated its ballast water, to meet standards set
35 by the department consistent with applicable state and federal laws.
36 ~~((When weather or extraordinary circumstances make access to treatment~~

1 ~~unsafe to the vessel or crew, the master of a vessel may delay~~
2 ~~compliance with any treatment required under this subsection until it~~
3 ~~is safe to complete the treatment.~~

4 ~~(3) Masters, owners, operators, or persons in charge shall submit~~
5 ~~to the department an interim ballast water management report by July 1,~~
6 ~~2006, in the form and manner prescribed by the department. The report~~
7 ~~shall describe actions needed to implement the ballast water~~
8 ~~requirements in subsection (2) of this section, including treatment~~
9 ~~methods applicable to the class of the vessel. Reports may include a~~
10 ~~statement that there are no treatment methods applicable to the vessel~~
11 ~~for which the report is being submitted.~~

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

16 ~~(a) Actions that the vessel owner or operator will take to~~
17 ~~implement the ballast water requirements in subsection (2) of this~~
18 ~~section, including treatment methods applicable to the class of the~~
19 ~~vessel;~~

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

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

25 (3) The department, in consultation with the ballast water work
26 group, or similar collaborative forum, shall adopt by rule standards
27 for the discharge of ballast water into the waters of the state and
28 their implementation timelines. The standards are intended to ensure
29 that the discharge of ballast water poses minimal risk of introducing
30 nonindigenous species. In developing these standards, the department
31 shall consider the extent to which the requirement is technologically
32 and practically feasible. Where practical and appropriate, the
33 standards must be compatible with standards set by the United States
34 coast guard, the federal clean water act (33 U.S.C. Sec. 1251-1387), or
35 the international maritime organization.

36 (4) The master, operator, or person in charge of a vessel is not
37 required to conduct an open sea exchange or treatment of ballast water
38 if the master, operator, or person in charge of a vessel determines

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

12 (5) For treatment technologies requiring shipyard modification
13 (~~that cannot reasonably be performed prior to July 1, 2007, the~~
14 ~~department shall provide the vessel owner or operator with an extension~~
15 ~~to the first scheduled drydock or shipyard period following July 1,~~
16 ~~2007)), the department may enter into a compliance plan with the vessel
17 owner. The compliance plan must include a timeline consistent with
18 drydock and shipyard schedules for completion of the modification. The
19 department shall adopt rules for compliance plans under this
20 subsection.~~

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

25 (~~(+6)~~) (7) The department shall make every effort to align ballast
26 water standards with adopted international and federal standards while
27 ensuring that the goals of this chapter are met.

28 (~~(+7)~~) (8) The requirements of this section do not apply to a
29 vessel discharging ballast water or sediments that originated solely
30 within the waters of Washington state, the Columbia river system, or
31 the internal waters of British Columbia south of latitude fifty degrees
32 north, including the waters of the Straits of Georgia and Juan de Fuca.

33 (~~(+8)~~) (9) Open sea exchange is an exchange that occurs fifty or
34 more nautical miles offshore. If the United States coast guard
35 requires a vessel to conduct an exchange further offshore, then that
36 distance is the required distance for purposes of compliance with this
37 chapter.

1 **Sec. 11.** 2004 c 227 s 2 (uncodified) is amended to read as
2 follows:

3 ~~((The director of the department of fish and wildlife must~~
4 ~~establish the))~~ A ballast water work group is created to assist the
5 department in the implementation of this chapter. The director shall
6 make appointments to the work group from the names provided by the
7 entities identified in this section.

8 (2) The ballast water work group consists of the following
9 individuals:

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

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

14 (c) Two representatives from the Columbia river steamship
15 operators;

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

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

19 (f) One representative from the Puget Sound water quality action
20 team;

21 (g) Two representatives from the environmental community;

22 (h) One representative of the shellfish industry;

23 (i) One representative of the tribes;

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

25 (k) One representative from the department ~~((of fish and~~
26 ~~wildlife))~~;

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

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

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

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

36 ~~((All issues relating to ballast water technology, including~~
37 ~~exchange and treatment methods, management plans, the associated costs,~~

1 and the availability of feasible and proven ballast water treatment
2 technologies that could be cost-effectively installed on vessels that
3 typically call on Washington ports;

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

6 (c) The costs associated with, and possible funding methods for,
7 implementing the ballast water program;

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

11 (e) Describe how the costs of treatment required as of July 1,
12 2007, will be substantially equivalent among ports where treatment is
13 required;

14 (f) Describe how the states of Washington and Oregon are
15 coordinating their efforts for ballast water management in the Columbia
16 river system; and

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

20 (4) The ballast water work group must begin operation immediately
21 upon the effective date of this section. The Puget Sound water quality
22 action team must provide staff for the ballast water work group. The
23 staff must come from existing personnel within the team)) Provide a
24 report to the legislature by July 1, 2009, on the progress of the work
25 group on the tasks listed in this section, and report on compliance
26 with this act, and recommendations for improvements, if any, to the
27 ballast water program;

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

31 (c) Advise the department on potential strategies to establish and
32 maintain an inventory of introduced nonindigenous plants and animals in
33 state waters in and adjacent to ports, harbors, oil transfer
34 facilities, grain elevators, and other ship-berthing facilities and
35 evaluate the effectiveness of the program and a program to assess
36 vessel-specific risks;

37 (d) Help the department review the needs of the ballast water

1 program, including research investments, and identify unmet needs, and
2 work through the Puget Sound action team's and the department's
3 internal budget development process to secure needed funds;

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

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

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

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

17 (i) Coordinate, in association with the departments of fish and
18 wildlife, ecology, and natural resources, the Puget Sound action team,
19 the Washington invasive species council, and other interested parties,
20 the development of a management approach for nonballast water ship
21 vectors as a source of nonindigenous species such as ship hull fouling,
22 sea chests and equipment, and vessels equipped with ballast tanks that
23 carry no ballast onboard;

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

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

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

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

35 (n) Coordinate, in association with the department, the departments
36 of ecology and natural resources, the Puget Sound action team, the
37 Washington invasive species council, and other interested parties,
38 recommendations for a management approach for treatment of unexchanged

1 ballast water when vessels claim an exemption under RCW 77.120.030.
2 The recommendations may consider shore-based management, emergency
3 chemical application, or other treatment methods that meet state and
4 federal requirements. The recommendations may also address potential
5 liability issues relating to discharge of ballast water. The ballast
6 water work group shall invite the United States environmental
7 protection agency and the United States coast guard to participate in
8 this evaluation. The ballast water work group shall provide a report
9 of the recommendations to the legislature by July 1, 2008;

10 (o) Other responsibilities, as necessary.

11 ~~((+5))~~ (4) The director must also monitor the activities of the
12 task force created by the state of Oregon in 2001 Or. Laws 722,
13 concerning ballast water management. The director shall provide the
14 ballast water work group with periodic updates of the Oregon task
15 force's efforts at developing a ballast water management system.

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

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

18 **Sec. 12.** RCW 77.120.070 and 2000 c 108 s 8 are each amended to
19 read as follows:

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

24 (2) The director or the director's designee may impose a civil
25 penalty or warning for a violation of the requirements of this chapter
26 on the owner or operator in charge of a vessel who fails to comply with
27 the requirements imposed under RCW 77.120.030 and 77.120.040. The
28 penalty shall not exceed ~~((five))~~ twenty-seven thousand five hundred
29 dollars for each day of a continuing violation. In determining the
30 amount of a civil penalty, the department shall set standards by rule
31 that consider if the violation was intentional, negligent, or without
32 any fault, and shall consider the quality and nature of risks created
33 by the violation. The owner or operator subject to such a penalty may
34 contest the determination by requesting an adjudicative proceeding
35 within twenty days. Any determination not timely contested is final
36 and may be reduced to a judgment enforceable in any court with

1 jurisdiction. If the department prevails using any judicial process to
2 collect a penalty under this section, the department shall also be
3 awarded its costs and reasonable attorneys' fees.

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

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

11 ~~(4))~~ (3) The department, in cooperation with the United States
12 coast guard, may enforce the requirements of this chapter.

13 NEW SECTION. **Sec. 13.** A new section is added to chapter 77.120
14 RCW to read as follows:

15 The department may assess a fee for any exemptions allowed under
16 this chapter. Such a fee may not exceed five thousand dollars. The
17 department may establish by rule schedules for any fee allowed in this
18 chapter. The schedules may provide for the incremental assessment of
19 a penalty based on criteria established by rule.

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

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

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

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

32 (b) Penalties deposited into the account may be used, in
33 consultation with the ballast water work group created in section 11 of
34 this act, only to support basic and applied research and carry out
35 education and outreach related to the state's ballast water management.

