

2SSB 5923 - S AMD 239

By Senators Hargrove, Jacobsen, Morton

ADOPTED 03/14/2007

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 aquatic invasive species enforcement account is created in
6 the state treasury. Moneys directed to the account from RCW 88.02.050
7 must be deposited in the account. Expenditures from the account may
8 only be used as provided in this section. Moneys in the account may be
9 spent only after appropriation.

10 (2) Funds in the aquatic invasive species enforcement account may
11 be appropriated to the Washington state patrol and the department of
12 fish and wildlife to develop an aquatic invasive species enforcement
13 program for recreational and commercial watercraft, which includes
14 equipment used to transport the watercraft and auxiliary equipment such
15 as attached or detached outboard motors. Funds must be expended as
16 follows:

17 (a) By the Washington state patrol, to inspect recreational and
18 commercial watercraft that are required to stop at port of entry weigh
19 stations managed by the Washington state patrol. The watercraft must
20 be inspected for the presence of zebra mussels and other aquatic
21 invasive species; and

22 (b) By the department of fish and wildlife, to establish random
23 check stations, (~~in conjunction with the department of fish and~~
24 ~~wildlife,~~) to inspect recreational and commercial watercraft (~~in~~
25 ~~areas of high boating activity~~) as provided for in RCW 77.12.879(3).

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

1 **Sec. 2.** RCW 77.12.879 and 2005 c 464 s 3 are each amended to read
2 as follows:

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

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

12 (a) To inspect recreational and commercial watercraft, watercraft
13 (~~((trailers))~~) transportation equipment, and outboard motors (~~((at~~
14 ~~selected boat launching sites))~~);

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

18 (c) To evaluate and survey the risk posed by marine recreational
19 and commercial watercraft in spreading aquatic invasive species into
20 Washington state waters;

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

23 (e) To implement an aquatic invasive species early detection and
24 rapid response plan.

25 (3) Funds in the aquatic invasive species enforcement account
26 created in RCW 43.43.400 may be appropriated to the department and
27 Washington state patrol to develop an aquatic invasive species
28 enforcement program for recreational and commercial watercraft. The
29 department shall provide training to Washington state patrol employees
30 working at port of entry weigh stations on how to inspect recreational
31 and commercial watercraft for the presence of zebra mussels and other
32 aquatic invasive species. The department (~~((shall also cooperatively~~
33 ~~work with the Washington state patrol to set up random check stations~~
34 ~~to inspect watercraft at areas of high boating activity))~~) is authorized
35 to require persons transporting recreational and commercial watercraft
36 to stop at check stations. Check stations must be plainly marked by
37 signs, operated by at least one uniformed fish and wildlife officer,
38 and operated in a safe manner. Any person stopped at a check station

1 who possesses watercraft or equipment that is contaminated with
2 prohibited aquatic animal or plant species is exempt from the criminal
3 penalties found in RCW 77.15.253 and 77.15.290, and watercraft
4 forfeiture provided for under section 7 of this act, if that person
5 complies with all department directives for the proper decontamination
6 of the watercraft and equipment.

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

12 NEW SECTION. Sec. 3. A new section is added to chapter 77.12 RCW
13 to read as follows:

14 (1) The department shall post signs warning vessel owners of the
15 threat of aquatic invasive species, the penalties associated with
16 introduction of a prohibited aquatic animal or plant species, and the
17 proper contact information for obtaining a free inspection. The signs
18 must be posted at all ports of entry to the state and at all boat
19 launches owned or leased by the department. The signs should provide
20 enough information for the public to discern whether the vessel has
21 been operated in an area that would warrant the need for an inspection.
22 The department shall include the same information on the department's
23 internet site. In order to reduce the need for unnecessary
24 inspections, the department may develop a process to assist the public
25 in determining whether a vessel inspection is warranted via telephonic
26 audio menu. The department shall consult with the state patrol and the
27 department of transportation regarding proper placement and
28 authorization for sign posting. The department must coordinate with
29 the department of parks and recreation to include such information in
30 all boating-related materials provided to the boating public. The
31 department may coordinate with other states on inspection requirements
32 and may determine when other state inspections meet Washington
33 standards.

34 (2) All port districts, privately or publicly owned marinas, state
35 parks, and other state agencies or political subdivisions that own or
36 lease a boat launch must display a sign as described under subsection
37 (1) of this section. The department shall provide the signs to all

1 port districts, privately or publicly owned marinas, state parks, and
2 other state agencies managing boat launches. Signs must be posted in
3 a location near the boat launch to provide maximum visibility to the
4 public.

5 (3) The department or its designee shall provide an inspection of
6 a watercraft to the person requesting the inspection. The department
7 or its designee shall provide an inspection receipt verifying that the
8 watercraft is not contaminated.

9 (4) The department shall provide training to all department
10 employees that are deployed in the field to provide for efficient and
11 timely response and inspections of recreational and commercial
12 watercraft.

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

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

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

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

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

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

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

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

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

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

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

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

9 (8) This section does not apply to:

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

11 (b) A person stopped at an aquatic invasive species check station
12 who possesses watercraft or equipment that is contaminated with a
13 prohibited, regulated, or unlisted aquatic animal species, if that
14 person complies with all department directives for the proper
15 decontamination of the watercraft and equipment; or

16 (c) A person who has voluntarily submitted a recreational or
17 commercial watercraft for inspection by the department and has received
18 a receipt verifying that the watercraft is not contaminated.

19 **Sec. 5.** RCW 77.15.290 and 2002 c 281 s 7 are each amended to read
20 as follows:

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

23 (a) Knowingly imports, moves within the state, or exports fish,
24 shellfish, or wildlife in violation of any rule of the commission or
25 the director governing the transportation or movement of fish,
26 shellfish, or wildlife and the transportation does not involve big
27 game, endangered fish or wildlife, deleterious exotic wildlife, or
28 fish, shellfish, or wildlife having a value greater than two hundred
29 fifty dollars; or

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

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

34 (a) Knowingly imports, moves within the state, or exports fish,
35 shellfish, or wildlife in violation of any rule of the commission or
36 the director governing the transportation or movement of fish,
37 shellfish, or wildlife and the transportation involves big game,

1 endangered fish or wildlife, deleterious exotic wildlife, or fish,
2 shellfish, or wildlife with a value of two hundred fifty dollars or
3 more; or

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

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

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

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

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

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

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

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

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

25 (e) As the commission may otherwise prescribe.

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

27 (7) This section does not apply to: (a) Any person stopped at an
28 aquatic invasive species check station who possesses watercraft or
29 equipment that is contaminated with a prohibited aquatic animal or
30 plant species if that person complies with all department directives
31 for the proper decontamination of the watercraft and equipment; or (b)
32 any person who has voluntarily submitted a recreational or commercial
33 watercraft for inspection by the department or its designee and has
34 received a receipt verifying that the watercraft is not contaminated.

35 NEW SECTION. Sec. 6. A new section is added to chapter 77.15 RCW
36 to read as follows:

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

3 (a) Obey check station signs; or

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

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

8 NEW SECTION. **Sec. 7.** A new section is added to chapter 77.15 RCW
9 to read as follows:

10 (1) A person is guilty of unlawfully introducing a prohibited
11 aquatic animal species if the person fails to:

12 (a) Have a vessel inspected by state patrol officers or state fish
13 and wildlife officers prior to launching the vessel in Washington
14 waters; and

15 (b) The vessel is contaminated with an aquatic invasive species, as
16 defined by the department.

17 (2) The penalty for unlawfully introducing a prohibited aquatic
18 animal species may include forfeiture of the contaminated watercraft,
19 under RCW 77.15.070.

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

22 The department shall develop a programmatic environmental impact
23 statement to address the department's plan for treatment and immediate
24 response to the introduction to Washington waters of a prohibited
25 aquatic invasive species.

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

28 The definitions in this section apply throughout this chapter
29 unless the context clearly requires otherwise.

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

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

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

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

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

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

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

19 (8) "Recognized marine trade association" means those trade
20 associations in Washington state that promote improved ballast water
21 management practices by educating their members on the provisions of
22 this chapter, participating in regional ballast water coordination
23 through the Pacific ballast water group, assisting the department in
24 the collection of ballast water exchange forms, and the monitoring of
25 ballast water. This includes members of the Puget Sound marine
26 committee for Puget Sound and the Columbia river steamship operators
27 association for the Columbia river.

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

30 (10) "Untreated ballast water" includes exchanged or unexchanged
31 ballast water that has not undergone treatment, boat, barge, or other
32 floating craft.

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

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

3 (13) "Waters of the state" means any surface waters, including
4 internal waters contiguous to state shorelines within the boundaries of
5 the state.

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

8 (1) This chapter applies to all vessels carrying ballast water into
9 the waters of the state from a voyage, except:

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

16 (b) A vessel ~~((i))~~ that discharges ballast water or sediments
17 only at the location where the ballast water or sediments originated,
18 if the ballast water or sediments do not mix with ballast water or
19 sediments from areas other than open sea waters~~((; or (ii) that does
20 not discharge ballast water in Washington waters))~~; and

21 (c) A vessel in innocent passage, merely traversing the ~~((internal
22 waters of Washington in the Strait of Juan de Fuca, bound for a port in
23 Canada,))~~ territorial sea of the United States and not entering or
24 departing a United States port, ~~((or a vessel in innocent passage,
25 which is a vessel merely traversing the territorial sea of the United
26 States and not entering or departing a United States port,))~~ or not
27 navigating the internal waters of the United States~~((; and~~

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

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

36 (3) The master or operator in charge of a vessel is responsible for
37 the safety of the vessel, its crew, and its passengers. Nothing in

1 this chapter relieves the master or operator in charge of a vessel of
2 the responsibility for ensuring the safety and stability of the vessel
3 or the safety of the crew and passengers.

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

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

10 ~~((1) Discharge into waters of the state is authorized if the~~
11 ~~vessel has conducted an open sea exchange of ballast water. A vessel~~
12 ~~is exempt from this requirement if the vessel's master reasonably~~
13 ~~determines that such a ballast water exchange operation will threaten~~
14 ~~the safety of the vessel or the vessel's crew, or is not feasible due~~
15 ~~to vessel design limitations or equipment failure. If a vessel relies~~
16 ~~on this exemption, then it may discharge ballast water into waters of~~
17 ~~the state, subject to any requirements of treatment under subsection~~
18 ~~(2) of this section and subject to RCW 77.120.040.))~~

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

27 ~~(3) Masters, owners, operators, or persons in charge shall submit~~
28 ~~to the department an interim ballast water management report by July 1,~~
29 ~~2006, in the form and manner prescribed by the department. The report~~
30 ~~shall describe actions needed to implement the ballast water~~
31 ~~requirements in subsection (2) of this section, including treatment~~
32 ~~methods applicable to the class of the vessel. Reports may include a~~
33 ~~statement that there are no treatment methods applicable to the vessel~~
34 ~~for which the report is being submitted.~~

35 ~~(4) The ballast water work group created in section 1, chapter 282,~~
36 ~~Laws of 2002 shall develop recommendations for the interim ballast~~

1 ~~water management report. The recommendations must include, but are not~~
2 ~~limited to:~~

3 ~~(a) Actions that the vessel owner or operator will take to~~
4 ~~implement the ballast water requirements in subsection (2) of this~~
5 ~~section, including treatment methods applicable to the class of the~~
6 ~~vessel;~~

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

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

12 (3) The department, in consultation with the ballast water work
13 group, or similar collaborative forum, shall adopt by rule standards
14 for the discharge of ballast water into the waters of the state and
15 their implementation timelines. The standards are intended to ensure
16 that the discharge of ballast water poses minimal risk of introducing
17 nonindigenous species. In developing these standards, the department
18 shall consider the extent to which the requirement is technologically
19 and practically feasible. Where practical and appropriate, the
20 standards must be compatible with standards set by the United States
21 coast guard, the federal clean water act (33 U.S.C. Sec. 1251-1387), or
22 the international maritime organization.

23 (4) If the master, operator, or person in charge of a vessel
24 decides that the open sea exchange or treatment of ballast waters would
25 threaten the safety of the vessel, its crew, or its passengers, because
26 of adverse weather, vessel design limitations, equipment failure, or
27 any other extraordinary conditions, the master, operator, or person in
28 charge of a vessel must chemically treat the ballast water prior to
29 discharge to ensure that aquatic invasive species are destroyed. A
30 master, operator, or person in charge of a vessel who relies on this
31 exemption must file documentation defined by the department, subject
32 to: (a) Payment of a fee not to exceed five thousand dollars; (b)
33 discharging only the minimal amount of ballast water operationally
34 necessary; (c) documenting the location of the discharge, chemical used
35 to treat the ballast water, and amount of chemical applied; (d)
36 ensuring that ballast water records accurately reflect any reasons for
37 not complying with the mandatory requirements; and (e) any other

1 requirements identified by the department by rule as provided in
2 subsections (3) and (6) of this section.

3 (5) For treatment technologies requiring shipyard modification
4 (~~that cannot reasonably be performed prior to July 1, 2007, the~~
5 ~~department shall provide the vessel owner or operator with an extension~~
6 ~~to the first scheduled drydock or shipyard period following July 1,~~
7 ~~2007)), the department may enter into a compliance plan with the vessel
8 owner. The compliance plan must include a timeline consistent with
9 drydock and shipyard schedules for completion of the modification. The
10 department shall adopt rules for compliance plans under this
11 subsection.~~

12 (6) For an exemption claimed in subsection (4) of this section, the
13 department shall adopt rules for defining exemption conditions,
14 requirements, compliance plans, and recommended chemicals for treatment
15 and corresponding dose concentration levels to meet the intent of this
16 section.

17 (~~(6)~~) (7) The department shall make every effort to align ballast
18 water standards with adopted international and federal standards while
19 ensuring that the goals of this chapter are met.

20 (~~(7)~~) (8) The requirements of this section do not apply to a
21 vessel discharging ballast water or sediments that originated solely
22 within the waters of Washington state, the Columbia river system, or
23 the internal waters of British Columbia south of latitude fifty degrees
24 north, including the waters of the Straits of Georgia and Juan de Fuca.

25 (~~(8)~~) (9) Open sea exchange is an exchange that occurs fifty or
26 more nautical miles offshore. If the United States coast guard
27 requires a vessel to conduct an exchange further offshore, then that
28 distance is the required distance for purposes of compliance with this
29 chapter.

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

32 (1) The director of the department (~~of fish and wildlife~~) must
33 establish the ballast water work group.

34 (2) The ballast water work group consists of the following
35 individuals:

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

1 (b) Two representatives from the Puget Sound steamship operators;
2 (c) Two representatives from the Columbia river steamship
3 operators;
4 (d) Three representatives from the Washington public ports, one of
5 whom must be a marine engineer;
6 (e) Two representatives from the petroleum transportation industry;
7 (f) One representative from the Puget Sound water quality action
8 team;
9 (g) Two representatives from the environmental community;
10 (h) One representative of the shellfish industry;
11 (i) One representative of the tribes;
12 (j) One representative of maritime labor; ((and))
13 (k) One representative from the department ((of fish and
14 wildlife));
15 (l) One representative from the department of ecology; and
16 (m) One representative from the cruise ship industry.
17 (3) ~~The ballast water work group must ((study, and provide a report~~
18 ~~to the legislature by December 15, 2006, the following issues))~~ begin
19 operation immediately upon the effective date of this section. The
20 Puget Sound action team or its successor agency must provide staff for
21 the ballast water work group from existing personnel within the action
22 team. The ballast water work group must:
23 (a) ~~((All issues relating to ballast water technology, including~~
24 ~~exchange and treatment methods, management plans, the associated costs,~~
25 ~~and the availability of feasible and proven ballast water treatment~~
26 ~~technologies that could be cost-effectively installed on vessels that~~
27 ~~typically call on Washington ports;~~
28 (b) ~~The services needed by the industry and the state to protect~~
29 ~~the marine environment, including penalties and enforcement;~~
30 (c) ~~The costs associated with, and possible funding methods for,~~
31 ~~implementing the ballast water program;~~
32 (d) ~~Consistency with federal and international standards, and~~
33 ~~identification of gaps between those standards, and the need for~~
34 ~~additional measures, if any, to meet the goals of this chapter;~~
35 (e) ~~Describe how the costs of treatment required as of July 1,~~
36 ~~2007, will be substantially equivalent among ports where treatment is~~
37 ~~required;~~

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

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

7 ~~(4) The ballast water work group must begin operation immediately~~
8 ~~upon the effective date of this section. The Puget Sound water quality~~
9 ~~action team must provide staff for the ballast water work group. The~~
10 ~~staff must come from existing personnel within the team)) Provide a~~
11 ~~report to the legislature by July 1, 2009, on the progress of the work~~
12 ~~group on the tasks listed in this section, and report on compliance~~
13 ~~with this act, and recommendations for improvements, if any, to the~~
14 ~~ballast water program;~~

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

18 (c) Advise the department as it develops a program to establish and
19 maintain an inventory of introduced nonindigenous plants and animals in
20 state waters in and adjacent to ports, harbors, oil transfer
21 facilities, grain elevators, and other ship-berthing facilities and
22 evaluate the effectiveness of the program and a program to assess
23 vessel-specific risks;

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

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

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

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

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

3 (i) Coordinate, in association with the departments of fish and
4 wildlife, ecology, and natural resources, the Puget Sound action team,
5 the Washington invasive species council, and other interested parties,
6 the development of a management approach for nonballast water ship
7 vectors as a source of nonindigenous species such as ship hull fouling,
8 sea chests and equipment, and vessels equipped with ballast tanks that
9 carry no ballast onboard;

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

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

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

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

21 (n) Other responsibilities, as necessary.

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

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

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

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

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

35 (2) The director or the director's designee may impose a civil
36 penalty or warning for a violation of the requirements of this chapter
37 on the owner or operator in charge of a vessel who fails to comply with

1 the requirements imposed under RCW 77.120.030 and 77.120.040. The
2 penalty shall not exceed ((five)) twenty-seven thousand five hundred
3 dollars for each day of a continuing violation. In determining the
4 amount of a civil penalty, the department shall set standards by rule
5 that consider if the violation was intentional, negligent, or without
6 any fault, and shall consider the quality and nature of risks created
7 by the violation. The owner or operator subject to such a penalty may
8 contest the determination by requesting an adjudicative proceeding
9 within twenty days. Any determination not timely contested is final
10 and may be reduced to a judgment enforceable in any court with
11 jurisdiction. If the department prevails using any judicial process to
12 collect a penalty under this section, the department shall also be
13 awarded its costs and reasonable attorneys' fees.

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

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

21 ~~(4))~~ (3) The department, in cooperation with the United States
22 coast guard, may enforce the requirements of this chapter.

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

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

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

32 (1) The ballast water management account is created in the custody
33 of the state treasurer. All receipts from legislative appropriations,
34 gifts, grants, donations, penalties, and mitigation fees received under
35 this chapter must be deposited into the account.

1 (2) The account is subject to allotment procedures under chapter
2 43.88 RCW, but an appropriation is not required. Only the director or
3 the director's designee may authorize expenditures from the account.
4 Expenditures from the account may be used only to carry out the
5 purposes of this chapter or support the goals of this chapter through
6 research and monitoring except:

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

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

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

15 The department may issue a special operating authorization for
16 passenger vessels conducting or assisting in research and testing
17 activities to determine the presence of invasive species in ballast
18 water collected in the waters of southeast Alaska north of latitude
19 fifty-four degrees thirty minutes north to sixty-one degrees ten
20 minutes north, extending to longitude one hundred forty-nine degrees
21 thirty minutes west. Such testing and research shall be reviewed by
22 the ballast water work group and the findings included in the report to
23 the legislature referenced in section 12 of this act.

24 **Sec. 17.** RCW 90.48.020 and 2002 c 161 s 4 are each amended to read
25 as follows:

26 Whenever the word "person" is used in this chapter, it shall be
27 construed to include any political subdivision, government agency,
28 municipality, industry, public or private corporation, copartnership,
29 association, firm, individual or any other entity whatsoever.

30 Wherever the words "waters of the state" shall be used in this
31 chapter, they shall be construed to include lakes, rivers, ponds,
32 streams, inland waters, underground waters, salt waters and all other
33 surface waters and watercourses within the jurisdiction of the state of
34 Washington.

35 Whenever the word "pollution" is used in this chapter, it shall be
36 construed to mean such contamination, or other alteration of the

1 physical, chemical or biological properties, of any waters of the
2 state, including change in temperature, taste, color, turbidity, or
3 odor of the waters, or such discharge of any liquid, gaseous, solid,
4 radioactive, or other substance into any waters of the state as will or
5 is likely to create a nuisance or render such waters harmful,
6 detrimental or injurious to the public health, safety or welfare, or to
7 domestic, commercial, industrial, agricultural, recreational, or other
8 legitimate beneficial uses, or to livestock, wild animals, birds, fish
9 or other aquatic life. "Pollution" shall not include emergency
10 discharge of ballast water as provided under RCW 77.120.030(4).

11 Wherever the word "department" is used in this chapter it shall
12 mean the department of ecology.

13 Whenever the word "director" is used in this chapter it shall mean
14 the director of ecology.

15 Whenever the words "aquatic noxious weed" are used in this chapter,
16 they have the meaning prescribed under RCW 17.26.020.

17 Whenever the words "general sewer plan" are used in this chapter
18 they shall be construed to include all sewerage general plans, sewer
19 general comprehensive plans, plans for a system of sewerage, and other
20 plans for sewer systems adopted by a local government entity including
21 but not limited to cities, towns, public utility districts, and water-
22 sewer districts.

23 **Sec. 18.** RCW 90.48.030 and 1987 c 109 s 123 are each amended to
24 read as follows:

25 The department shall have the jurisdiction to control and prevent
26 the pollution of streams, lakes, rivers, ponds, inland waters, salt
27 waters, water courses, and other surface and underground waters of the
28 state of Washington. The department shall not have jurisdiction over,
29 and this chapter shall not apply to, emergency discharge of ballast
30 water as provided under RCW 77.120.030(4).

31 NEW SECTION. **Sec. 19.** Section 12 of this act is added to chapter
32 77.120 RCW.

33 NEW SECTION. **Sec. 20.** The following acts or parts of acts are
34 each repealed:

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

2SSB 5923 - S AMD

By Senators Hargrove, Jacobsen, Morton

ADOPTED 03/14/2007

7 On page 1, line 2 of the title, after "control;" strike the
8 remainder of the title and insert "amending RCW 43.43.400, 77.12.879,
9 77.15.253, 77.15.290, 77.120.010, 77.120.020, 77.120.030, 77.120.070,
10 90.48.020, and 90.48.030; amending 2004 c 227 s 2 (uncodified); adding
11 new sections to chapter 77.12 RCW; adding new sections to chapter 77.15
12 RCW; adding new sections to chapter 77.120 RCW; repealing RCW
13 77.120.060, 77.120.080, and 77.120.090; and prescribing penalties."

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