

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5923

60th Legislature
2007 Regular Session

Passed by the Senate April 14, 2007
YEAS 49 NAYS 0

President of the Senate

Passed by the House April 6, 2007
YEAS 94 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5923** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5923

AS AMENDED BY THE HOUSE

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By Senate Committee on Ways & Means (originally sponsored by
Senators Swecker, Jacobsen and Sheldon)

READ FIRST TIME 03/05/07.

1 AN ACT Relating to aquatic invasive species enforcement and
2 control; amending RCW 43.43.400, 77.08.010, 77.12.879, 77.15.253,
3 77.15.290, 77.120.010, 77.120.020, 77.120.030, and 77.120.070; amending
4 2004 c 227 s 2 (uncodified); adding a new section to chapter 77.12 RCW;
5 adding a new section to chapter 77.15 RCW; adding new sections to
6 chapter 77.120 RCW; repealing RCW 77.120.060, 77.120.080, and
7 77.120.090; and prescribing penalties.

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

9 **Sec. 1.** RCW 43.43.400 and 2005 c 464 s 5 are each amended to read
10 as follows:

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

13 (a) "Aquatic invasive species" means any invasive, prohibited,
14 regulated, unregulated, or unlisted aquatic animal or plant species as
15 defined under RCW 77.08.010 (49) through (54), aquatic noxious weeds as
16 defined under RCW 17.26.020(5)(c), and aquatic nuisance species as
17 defined under RCW 77.60.130(1).

18 (b) "Recreational and commercial watercraft" includes the boat, as

1 well as equipment used to transport the boat, and any auxiliary
2 equipment such as attached or detached outboard motors.

3 (2) The aquatic invasive species enforcement 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))~~ (3) Funds in the aquatic invasive species enforcement
9 account may be appropriated to the Washington state patrol and the
10 department of fish and wildlife to develop an aquatic invasive species
11 enforcement program for recreational and commercial watercraft, which
12 includes equipment used to transport the watercraft and auxiliary
13 equipment such as attached or detached outboard motors. Funds must be
14 expended as follows:

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

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

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

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

28 (iii) Provide training to all department employees that are
29 deployed in the field to inspect recreational and commercial
30 watercraft; and

31 (iv) Provide an inspection receipt verifying that the watercraft is
32 not contaminated after the watercraft has been inspected at a check
33 station or has been inspected at the request of the owner of the
34 recreational or commercial watercraft. The inspection receipt is valid
35 until the watercraft is used again.

36 ~~((+3))~~ (4) The Washington state patrol and the department of fish
37 and wildlife shall submit a biennial report to the appropriate

1 legislative committees describing the actions taken to implement this
2 section along with suggestions on how to better fulfill the intent of
3 chapter 464, Laws of 2005. The first report is due December 1, 2007.

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

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

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

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

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

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

17 (5) "Fish and wildlife officer" means a person appointed and
18 commissioned by the director, with authority to enforce this title and
19 rules adopted pursuant to this title, and other statutes as prescribed
20 by the legislature. Fish and wildlife officer includes a person
21 commissioned before June 11, 1998, as a wildlife agent or a fisheries
22 patrol officer.

23 (6) "Ex officio fish and wildlife officer" means a commissioned
24 officer of a municipal, county, state, or federal agency having as its
25 primary function the enforcement of criminal laws in general, while the
26 officer is in the appropriate jurisdiction. The term "ex officio fish
27 and wildlife officer" includes special agents of the national marine
28 fisheries service, state parks commissioned officers, United States
29 fish and wildlife special agents, department of natural resources
30 enforcement officers, and United States forest service officers, while
31 the agents and officers are within their respective jurisdictions.

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

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

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

1 (10) "Open season" means those times, manners of taking, and places
2 or waters established by rule of the commission for the lawful hunting,
3 fishing, taking, or possession of game animals, game birds, game fish,
4 food fish, or shellfish that conform to the special restrictions or
5 physical descriptions established by rule of the commission or that
6 have otherwise been deemed legal to hunt, fish, take, harvest, or
7 possess by rule of the commission. "Open season" includes the first
8 and last days of the established time.

9 (11) "Closed season" means all times, manners of taking, and places
10 or waters other than those established by rule of the commission as an
11 open season. "Closed season" also means all hunting, fishing, taking,
12 or possession of game animals, game birds, game fish, food fish, or
13 shellfish that do not conform to the special restrictions or physical
14 descriptions established by rule of the commission as an open season or
15 that have not otherwise been deemed legal to hunt, fish, take, harvest,
16 or possess by rule of the commission as an open season.

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

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

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

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

27 (16) "Wildlife" means all species of the animal kingdom whose
28 members exist in Washington in a wild state. This includes but is not
29 limited to mammals, birds, reptiles, amphibians, fish, and
30 invertebrates. The term "wildlife" does not include feral domestic
31 mammals, old world rats and mice of the family Muridae of the order
32 Rodentia, or those fish, shellfish, and marine invertebrates classified
33 as food fish or shellfish by the director. The term "wildlife"
34 includes all stages of development and the bodily parts of wildlife
35 members.

36 (17) "Wild animals" means those species of the class Mammalia whose
37 members exist in Washington in a wild state and the species Rana

1 catesbeiana (bullfrog). The term "wild animal" does not include feral
2 domestic mammals or old world rats and mice of the family Muridae of
3 the order Rodentia.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (36) "Offshore waters" means marine waters of the Pacific Ocean
13 outside the territorial boundaries of the state, including the marine
14 waters of other states and countries.

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

18 (38) "Resident" means:

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

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

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

29 (40) "Shellfish" means those species of marine and freshwater
30 invertebrates that have been classified and that shall not be taken
31 except as authorized by rule of the commission. The term "shellfish"
32 includes all stages of development and the bodily parts of shellfish
33 species.

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

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

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

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

6 (45) "Fishery" means the taking of one or more particular species
7 of fish or shellfish with particular gear in a particular geographical
8 area.

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

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

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

19 (49) "Invasive species" means a plant species or a nonnative animal
20 species that either:

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

23 (b) Threatens or may threaten natural resources or their use in the
24 state;

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

27 (d) Threatens or harms human health.

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

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

34 (52) "Unregulated aquatic animal species" means a nonnative animal
35 species that has been classified as an unregulated aquatic animal
36 species by the commission.

37 (53) "Unlisted aquatic animal species" means a nonnative animal

1 species that has not been classified as a prohibited aquatic animal
2 species, a regulated aquatic animal species, or an unregulated aquatic
3 animal species by the commission.

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

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

9 (56) "Aquatic invasive species" means any invasive, prohibited,
10 regulated, unregulated, or unlisted aquatic animal or plant species as
11 defined under subsections (49) through (54) of this section, aquatic
12 noxious weeds as defined under RCW 17.26.020(5)(c), and aquatic
13 nuisance species as defined under RCW 77.60.130(1).

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

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

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

24 (2) Funds in the aquatic invasive species prevention account may be
25 appropriated to the department to develop an aquatic invasive species
26 prevention program for recreational and commercial watercraft. Funds
27 must be expended as follows:

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

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

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

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

1 (e) To implement an aquatic invasive species early detection and
2 rapid response plan. The plan must address the treatment and immediate
3 response to the introduction to Washington waters of aquatic invasive
4 species. Agency and public review of the plan must be conducted under
5 chapter 43.21C RCW, the state environmental policy act. If the
6 implementation measures or actions would have a probable significant
7 adverse environmental impact, a detailed statement under chapter 43.21C
8 RCW must be prepared on the plan.

9 (3) Funds in the aquatic invasive species enforcement account
10 created in RCW 43.43.400 may be appropriated to the department and
11 Washington state patrol to develop an aquatic invasive species
12 enforcement program for recreational and commercial watercraft. The
13 department shall provide training to Washington state patrol employees
14 working at port of entry weigh stations on how to inspect recreational
15 and commercial watercraft for the presence of ((zebra mussels and
16 other)) aquatic invasive species. The department ((shall also
17 cooperatively work with the Washington state patrol to set up random
18 check stations to inspect watercraft at areas of high boating
19 activity)) is authorized to require persons transporting recreational
20 and commercial watercraft to stop at check stations. Check stations
21 must be plainly marked by signs, operated by at least one uniformed
22 fish and wildlife officer, and operated in a safe manner. Any person
23 stopped at a check station who possesses a recreational or commercial
24 watercraft that is contaminated with aquatic invasive species is exempt
25 from the criminal penalties found in RCW 77.15.253 and 77.15.290, and
26 forfeiture under RCW 77.15.070, if that person complies with all
27 department directives for the proper decontamination of the watercraft
28 and equipment.

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

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

36 (1) The department shall adopt rules governing how and when the
37 owners of recreational and commercial watercraft may request an

1 inspection of the watercraft for the presence of aquatic invasive
2 species. The department may coordinate with other states on inspection
3 requirements and may determine when other state inspections meet
4 Washington standards.

5 (2) The department shall develop and post signs warning vessel
6 owners of the threat of aquatic invasive species, the penalties
7 associated with introduction of an aquatic invasive species, and the
8 contact information for obtaining a free inspection. The signs should
9 provide enough information for the public to discern whether the vessel
10 has been operated in an area that would warrant the need for an
11 inspection. The department shall consult with the state patrol and the
12 department of transportation regarding proper placement and
13 authorization for sign posting.

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

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

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

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

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

31 (a) Transport prohibited aquatic animal species to the department,
32 or to another destination designated by the director, in a manner
33 designated by the director, for purposes of identifying a species or
34 reporting the presence of a species;

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

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

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

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

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

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

14 (6) A person is guilty of unlawful release of an unlisted aquatic
15 animal species if he or she releases an unlisted aquatic animal species
16 into state waters without requesting a commission designation under RCW
17 77.12.020.

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

20 (8) This section does not apply to:

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

22 (b) A person stopped at an aquatic invasive species check station
23 who possesses a recreational or commercial watercraft that is
24 contaminated with an aquatic invasive species, if that person complies
25 with all department directives for the proper decontamination of the
26 watercraft and equipment; or

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

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

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

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

1 shellfish, or wildlife and the transportation does not involve big
2 game, endangered fish or wildlife, deleterious exotic wildlife, or
3 fish, shellfish, or wildlife having a value greater than two hundred
4 fifty dollars; or

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

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

9 (a) Knowingly imports, moves within the state, or exports fish,
10 shellfish, or wildlife in violation of any rule of the commission or
11 the director governing the transportation or movement of fish,
12 shellfish, or wildlife and the transportation involves big game,
13 endangered fish or wildlife, deleterious exotic wildlife, or fish,
14 shellfish, or wildlife with a value of two hundred fifty dollars or
15 more; or

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

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

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

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

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

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

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

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

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

37 (e) As the commission may otherwise prescribe.

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

1 (7) This section does not apply to: (a) Any person stopped at an
2 aquatic invasive species check station who possesses a recreational or
3 commercial watercraft that is contaminated with an aquatic invasive
4 species if that person complies with all department directives for the
5 proper decontamination of the watercraft and equipment; or (b) any
6 person who has voluntarily submitted a recreational or commercial
7 watercraft for inspection by the department or its designee and has
8 received a receipt verifying that the watercraft has not been
9 contaminated since its last use.

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

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

14 (a) Obey check station signs; or

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

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

19 **Sec. 8.** RCW 77.120.010 and 2000 c 108 s 2 are each amended to read
20 as follows:

21 The definitions in this section apply throughout this chapter
22 unless the context clearly requires otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

33 (13) "Waters of the state" means any surface waters, including
34 internal waters contiguous to state shorelines within the boundaries of
35 the state.

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

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

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

9 (b) A vessel (~~(i)~~) that discharges ballast water or sediments
10 only at the location where the ballast water or sediments originated,
11 if the ballast water or sediments do not mix with ballast water or
12 sediments from areas other than open sea waters(~~(i or ii) that does~~
13 ~~not discharge ballast water in Washington waters~~); and

14 (c) A vessel in innocent passage, merely traversing the (~~(internal~~
15 ~~waters of Washington in the Strait of Juan de Fuca, bound for a port in~~
16 ~~Canada,~~) territorial sea of the United States and not entering or
17 departing a United States port, (~~(or a vessel in innocent passage,~~
18 ~~which is a vessel merely traversing the territorial sea of the United~~
19 ~~States and not entering or departing a United States port,~~) or not
20 navigating the internal waters of the United States(~~(i and~~

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

23 ballast water into the waters of the state.
24 (2) This chapter does not authorize the discharge of oil or noxious
25 liquid substances in a manner prohibited by state, federal, or
26 international laws or regulations. Ballast water containing oil,
27 noxious liquid substances, or any other pollutant shall be discharged
28 in accordance with the applicable requirements.

29 (3) The master or operator in charge of a vessel is responsible for
30 the safety of the vessel, its crew, and its passengers. Nothing in
31 this chapter relieves the master or operator in charge of a vessel of
32 the responsibility for ensuring the safety and stability of the vessel
33 or the safety of the crew and passengers.

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

36 (1) The owner or operator in charge of any vessel covered by this

1 chapter is required to ensure that the vessel under their ownership or
2 control does not discharge ballast water into the waters of the state
3 except as authorized by this section.

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

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

21 ~~(3) Masters, owners, operators, or persons in charge shall submit
22 to the department an interim ballast water management report by July 1,
23 2006, in the form and manner prescribed by the department. The report
24 shall describe actions needed to implement the ballast water
25 requirements in subsection (2) of this section, including treatment
26 methods applicable to the class of the vessel. Reports may include a
27 statement that there are no treatment methods applicable to the vessel
28 for which the report is being submitted.~~

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

33 ~~(a) Actions that the vessel owner or operator will take to
34 implement the ballast water requirements in subsection (2) of this
35 section, including treatment methods applicable to the class of the
36 vessel;~~

37 ~~(b) Necessary plan elements when there are not treatment methods~~

1 ~~applicable to the vessel for which the report is being submitted, or~~
2 ~~which would meet the requirements of this chapter; and~~

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

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

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

30 (5) For treatment technologies requiring shipyard modification
31 ((that cannot reasonably be performed prior to July 1, 2007, the
32 department shall provide the vessel owner or operator with an extension
33 to the first scheduled drydock or shipyard period following July 1,
34 2007)), the department may enter into a compliance plan with the vessel
35 owner. The compliance plan must include a timeline consistent with
36 drydock and shipyard schedules for completion of the modification. The
37 department shall adopt rules for compliance plans under this
38 subsection.

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

5 ~~((+6))~~ (7) The department shall make every effort to align ballast
6 water standards with adopted international and federal standards while
7 ensuring that the goals of this chapter are met.

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

13 ~~((+8))~~ (9) Open sea exchange is an exchange that occurs fifty or
14 more nautical miles offshore. If the United States coast guard
15 requires a vessel to conduct an exchange further offshore, then that
16 distance is the required distance for purposes of compliance with this
17 chapter.

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

20 (1) ~~((The director of the department of fish and wildlife must~~
21 ~~establish the))~~ A ballast water work group is created to assist the
22 department in the implementation of this chapter. The director shall
23 make appointments to the work group from the names provided by the
24 entities identified in this section.

25 (2) The ballast water work group consists of the following
26 individuals:

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

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

31 (c) Two representatives from the Columbia river steamship
32 operators;

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

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

36 (f) One representative from the Puget Sound water quality action
37 team;

- 1 (g) Two representatives from the environmental community;
- 2 (h) One representative of the shellfish industry;
- 3 (i) One representative of the tribes;
- 4 (j) One representative of maritime labor; (~~and~~)
- 5 (k) One representative from the department (~~of fish and~~
- 6 ~~wildlife~~);
- 7 (l) One representative from the department of ecology;
- 8 (m) One representative from the cruise ship industry; and
- 9 (n) One representative from the department of natural resources.

10 (3) The ballast water work group must (~~study, and provide a report~~

11 ~~to the legislature by December 15, 2006, the following issues~~) begin

12 operation immediately upon the effective date of this section. The

13 Puget Sound action team or its successor agency must provide staff for

14 the ballast water work group from existing personnel within the action

15 team. The ballast water work group must:

16 (a) (~~All issues relating to ballast water technology, including~~

17 ~~exchange and treatment methods, management plans, the associated costs,~~

18 ~~and the availability of feasible and proven ballast water treatment~~

19 ~~technologies that could be cost-effectively installed on vessels that~~

20 ~~typically call on Washington ports;~~

21 (b) ~~The services needed by the industry and the state to protect~~

22 ~~the marine environment, including penalties and enforcement;~~

23 (c) ~~The costs associated with, and possible funding methods for,~~

24 ~~implementing the ballast water program;~~

25 (d) ~~Consistency with federal and international standards, and~~

26 ~~identification of gaps between those standards, and the need for~~

27 ~~additional measures, if any, to meet the goals of this chapter;~~

28 (e) ~~Describe how the costs of treatment required as of July 1,~~

29 ~~2007, will be substantially equivalent among ports where treatment is~~

30 ~~required;~~

31 (f) ~~Describe how the states of Washington and Oregon are~~

32 ~~coordinating their efforts for ballast water management in the Columbia~~

33 ~~river system; and~~

34 (g) ~~Describe how the states of Washington, Oregon, and California~~

35 ~~and the province of British Columbia are coordinating their efforts for~~

36 ~~ballast water management on the west coast.~~

37 (4) ~~The ballast water work group must begin operation immediately~~

38 ~~upon the effective date of this section. The Puget Sound water quality~~

1 ~~action team must provide staff for the ballast water work group. The~~
2 ~~staff must come from existing personnel within the team))~~ Provide a
3 report to the legislature by July 1, 2009, on the progress of the work
4 group on the tasks listed in this section, and report on compliance
5 with this act, and recommendations for improvements, if any, to the
6 ballast water program;

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

10 (c) Advise the department on potential strategies to establish and
11 maintain an inventory of introduced nonindigenous plants and animals in
12 state waters in and adjacent to ports, harbors, oil transfer
13 facilities, grain elevators, and other ship-berthing facilities and
14 evaluate the effectiveness of the program and a program to assess
15 vessel-specific risks;

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

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

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

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

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

33 (i) Coordinate, in association with the departments of fish and
34 wildlife, ecology, and natural resources, the Puget Sound action team,
35 the Washington invasive species council, and other interested parties,
36 the development of a management approach for nonballast water ship
37 vectors as a source of nonindigenous species such as ship hull fouling,

1 sea chests and equipment, and vessels equipped with ballast tanks that
2 carry no ballast onboard;

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

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

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

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

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

27 (o) Other responsibilities, as necessary.

28 ~~((+5))~~ (4) The director must also monitor the activities of the
29 task force created by the state of Oregon in 2001 Or. Laws 722,
30 concerning ballast water management. The director shall provide the
31 ballast water work group with periodic updates of the Oregon task
32 force's efforts at developing a ballast water management system.

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

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

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

37 (1) ~~((Except as limited by subsection (2) or (3) of this section,))~~

1 The department may establish by rule schedules for any penalty allowed
2 in this chapter. The schedules may provide for the incremental
3 assessment of a penalty based on criteria established by rule.

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

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

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

27 ~~(4))~~ (3) The department, in cooperation with the United States
28 coast guard, may enforce the requirements of this chapter.

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

31 The department may assess a fee for any exemptions allowed under
32 this chapter. Such a fee may not exceed five thousand dollars. The
33 department may establish by rule schedules for any fee allowed in this
34 chapter. The schedules may provide for the incremental assessment of
35 a penalty based on criteria established by rule.

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.

--- END ---