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ENGROSSED SECOND SUBSTITUTE SENATE BILL 5923

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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, 77.12.879, 77.15.253, 77.15.290,  
3 77.120.010, 77.120.020, 77.120.030, 77.120.070, 90.48.020, and  
4 90.48.030; amending 2004 c 227 s 2 (uncodified); adding new sections to  
5 chapter 77.12 RCW; adding new sections to chapter 77.15 RCW; adding new  
6 sections to chapter 77.120 RCW; repealing RCW 77.120.060, 77.120.080,  
7 and 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 aquatic invasive species enforcement account is created in  
12 the state treasury. Moneys directed to the account from RCW 88.02.050  
13 must be deposited in the account. Expenditures from the account may  
14 only be used as provided in this section. Moneys in the account may be  
15 spent only after appropriation.

16 (2) Funds in the aquatic invasive species enforcement account may  
17 be appropriated to the Washington state patrol and the department of  
18 fish and wildlife to develop an aquatic invasive species enforcement  
19 program for recreational and commercial watercraft, which includes

1 equipment used to transport the watercraft and auxiliary equipment such  
2 as attached or detached outboard motors. Funds must be expended as  
3 follows:

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

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

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

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

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

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

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

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

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

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

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

5 (3) Funds in the aquatic invasive species enforcement account  
6 created in RCW 43.43.400 may be appropriated to the department and  
7 Washington state patrol to develop an aquatic invasive species  
8 enforcement program for recreational and commercial watercraft. The  
9 department shall provide training to Washington state patrol employees  
10 working at port of entry weigh stations on how to inspect recreational  
11 and commercial watercraft for the presence of zebra mussels and other  
12 aquatic invasive species. The department (~~shall also cooperatively~~  
13 ~~work with the Washington state patrol to set up random check stations~~  
14 ~~to inspect watercraft at areas of high boating activity~~) is authorized  
15 to require persons transporting recreational and commercial watercraft  
16 to stop at check stations. Check stations must be plainly marked by  
17 signs, operated by at least one uniformed fish and wildlife officer,  
18 and operated in a safe manner. Any person stopped at a check station  
19 who possesses watercraft or equipment that is contaminated with  
20 prohibited aquatic animal or plant species is exempt from the criminal  
21 penalties found in RCW 77.15.253 and 77.15.290, and watercraft  
22 forfeiture provided for under section 7 of this act, if that person  
23 complies with all department directives for the proper decontamination  
24 of the watercraft and equipment.

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

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

32 (1) The department shall post signs warning vessel owners of the  
33 threat of aquatic invasive species, the penalties associated with  
34 introduction of a prohibited aquatic animal or plant species, and the  
35 proper contact information for obtaining a free inspection. The signs  
36 must be posted at all ports of entry to the state and at all boat  
37 launches owned or leased by the department. The signs should provide

1 enough information for the public to discern whether the vessel has  
2 been operated in an area that would warrant the need for an inspection.  
3 The department shall include the same information on the department's  
4 internet site. In order to reduce the need for unnecessary  
5 inspections, the department may develop a process to assist the public  
6 in determining whether a vessel inspection is warranted via telephonic  
7 audio menu. The department shall consult with the state patrol and the  
8 department of transportation regarding proper placement and  
9 authorization for sign posting. The department must coordinate with  
10 the department of parks and recreation to include such information in  
11 all boating-related materials provided to the boating public. The  
12 department may coordinate with other states on inspection requirements  
13 and may determine when other state inspections meet Washington  
14 standards.

15 (2) All port districts, privately or publicly owned marinas, state  
16 parks, and other state agencies or political subdivisions that own or  
17 lease a boat launch must display a sign as described under subsection  
18 (1) of this section. The department shall provide the signs to all  
19 port districts, privately or publicly owned marinas, state parks, and  
20 other state agencies managing boat launches. Signs must be posted in  
21 a location near the boat launch to provide maximum visibility to the  
22 public.

23 (3) The department or its designee shall provide an inspection of  
24 a watercraft to the person requesting the inspection. The department  
25 or its designee shall provide an inspection receipt verifying that the  
26 watercraft is not contaminated.

27 (4) The department shall provide training to all department  
28 employees that are deployed in the field to provide for efficient and  
29 timely response and inspections of recreational and commercial  
30 watercraft.

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

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

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

1 (a) Transport prohibited aquatic animal species to the department,  
2 or to another destination designated by the director, in a manner  
3 designated by the director, for purposes of identifying a species or  
4 reporting the presence of a species;

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

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

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

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

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

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

21 (6) A person is guilty of unlawful release of an unlisted aquatic  
22 animal species if he or she releases an unlisted aquatic animal species  
23 into state waters without requesting a commission designation under RCW  
24 77.12.020.

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

27 (8) This section does not apply to:

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

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

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

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

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

5       (a) Knowingly imports, moves within the state, or exports fish,  
6 shellfish, or wildlife in violation of any rule of the commission or  
7 the director governing the transportation or movement of fish,  
8 shellfish, or wildlife and the transportation does not involve big  
9 game, endangered fish or wildlife, deleterious exotic wildlife, or  
10 fish, shellfish, or wildlife having a value greater than two hundred  
11 fifty dollars; or

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

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

16       (a) Knowingly imports, moves within the state, or exports fish,  
17 shellfish, or wildlife in violation of any rule of the commission or  
18 the director governing the transportation or movement of fish,  
19 shellfish, or wildlife and the transportation involves big game,  
20 endangered fish or wildlife, deleterious exotic wildlife, or fish,  
21 shellfish, or wildlife with a value of two hundred fifty dollars or  
22 more; or

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

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

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

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

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

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

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

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

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

7 (e) As the commission may otherwise prescribe.

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

9 (7) This section does not apply to: (a) Any person stopped at an  
10 aquatic invasive species check station who possesses watercraft or  
11 equipment that is contaminated with a prohibited aquatic animal or  
12 plant species if that person complies with all department directives  
13 for the proper decontamination of the watercraft and equipment; or (b)  
14 any person who has voluntarily submitted a recreational or commercial  
15 watercraft for inspection by the department or its designee and has  
16 received a receipt verifying that the watercraft is not contaminated.

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

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

21 (a) Obey check station signs; or

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

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

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

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

30 (a) Have a vessel inspected by state patrol officers or state fish  
31 and wildlife officers prior to launching the vessel in Washington  
32 waters; and

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

35 (2) The penalty for unlawfully introducing a prohibited aquatic

1 animal species may include forfeiture of the contaminated watercraft,  
2 under RCW 77.15.070.

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

5 The department shall develop a programmatic environmental impact  
6 statement to address the department's plan for treatment and immediate  
7 response to the introduction to Washington waters of a prohibited  
8 aquatic invasive species.

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

11 The definitions in this section apply throughout this chapter  
12 unless the context clearly requires otherwise.

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

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

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

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

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

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

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



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

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

12 (10) "Untreated ballast water" includes exchanged or unexchanged  
13 ballast water that has not undergone treatment, boat, barge, or other  
14 floating craft.

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

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

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

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

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

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

36 (b) A vessel (~~(+i)~~) that discharges ballast water or sediments  
37 only at the location where the ballast water or sediments originated,

1 if the ballast water or sediments do not mix with ballast water or  
2 sediments from areas other than open sea waters(~~(i) or (ii) that does~~  
3 ~~not discharge ballast water in Washington waters~~); and

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

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

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

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

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

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

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

1 ~~the state, subject to any requirements of treatment under subsection~~  
2 ~~(2) of this section and subject to RCW 77.120.040.)~~

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

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

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

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

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

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

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

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

5 (4) If the master, operator, or person in charge of a vessel  
6 decides that the open sea exchange or treatment of ballast waters would  
7 threaten the safety of the vessel, its crew, or its passengers, because  
8 of adverse weather, vessel design limitations, equipment failure, or  
9 any other extraordinary conditions, the master, operator, or person in  
10 charge of a vessel must chemically treat the ballast water prior to  
11 discharge to ensure that aquatic invasive species are destroyed. A  
12 master, operator, or person in charge of a vessel who relies on this  
13 exemption must file documentation defined by the department, subject  
14 to: (a) Payment of a fee not to exceed five thousand dollars; (b)  
15 discharging only the minimal amount of ballast water operationally  
16 necessary; (c) documenting the location of the discharge, chemical used  
17 to treat the ballast water, and amount of chemical applied; (d)  
18 ensuring that ballast water records accurately reflect any reasons for  
19 not complying with the mandatory requirements; and (e) any other  
20 requirements identified by the department by rule as provided in  
21 subsections (3) and (6) of this section.

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

31 (6) For an exemption claimed in subsection (4) of this section, the  
32 department shall adopt rules for defining exemption conditions,  
33 requirements, compliance plans, and recommended chemicals for treatment  
34 and corresponding dose concentration levels to meet the intent of this  
35 section.

36 ((+6+)) (7) The department shall make every effort to align ballast  
37 water standards with adopted international and federal standards while  
38 ensuring that the goals of this chapter are met.

1       ~~((7))~~ (8) The requirements of this section do not apply to a  
2 vessel discharging ballast water or sediments that originated solely  
3 within the waters of Washington state, the Columbia river system, or  
4 the internal waters of British Columbia south of latitude fifty degrees  
5 north, including the waters of the Straits of Georgia and Juan de Fuca.

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

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

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

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

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

19       (b) Two representatives from the Puget Sound steamship operators;

20       (c) Two representatives from the Columbia river steamship  
21 operators;

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

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

25       (f) One representative from the Puget Sound water quality action  
26 team;

27       (g) Two representatives from the environmental community;

28       (h) One representative of the shellfish industry;

29       (i) One representative of the tribes;

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

31       (k) One representative from the department (~~of fish and  
32 wildlife~~);

33       (l) One representative from the department of ecology; and

34       (m) One representative from the cruise ship industry.

35       (3) The ballast water work group must ~~(study, and provide a report  
36 to the legislature by December 15, 2006, the following issues))~~ begin  
37 operation immediately upon the effective date of this section. The

1 Puget Sound action team or its successor agency must provide staff for  
2 the ballast water work group from existing personnel within the action  
3 team. The ballast water work group must:

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

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

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

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

16 ~~(e) Describe how the costs of treatment required as of July 1,~~  
17 ~~2007, will be substantially equivalent among ports where treatment is~~  
18 ~~required;~~

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

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

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

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

36 (c) Advise the department as it develops a program to establish and  
37 maintain an inventory of introduced nonindigenous plants and animals in  
38 state waters in and adjacent to ports, harbors, oil transfer

1 facilities, grain elevators, and other ship-berthing facilities and  
2 evaluate the effectiveness of the program and a program to assess  
3 vessel-specific risks;

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

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

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

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

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

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

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

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

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

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

1 (n) Other responsibilities, as necessary.

2 ~~((5))~~ (4) The director must also monitor the activities of the  
3 task force created by the state of Oregon in 2001 Or. Laws 722,  
4 concerning ballast water management. The director shall provide the  
5 ballast water work group with periodic updates of the Oregon task  
6 force's efforts at developing a ballast water management system.

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

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

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

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

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

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

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



1       ~~(4))~~ (3) The department, in cooperation with the United States  
2 coast guard, may enforce the requirements of this chapter.

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

5       The department may assess a fee for any exemptions allowed under  
6 this chapter. Such a fee may not exceed five thousand dollars. The  
7 department may establish by rule schedules for any fee allowed in this  
8 chapter. The schedules may provide for the incremental assessment of  
9 a penalty based on criteria established by rule.

10       NEW SECTION. **Sec. 15.** A new section is added to chapter 77.120  
11 RCW to read as follows:

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

16       (2) The account is subject to allotment procedures under chapter  
17 43.88 RCW, but an appropriation is not required. Only the director or  
18 the director's designee may authorize expenditures from the account.  
19 Expenditures from the account may be used only to carry out the  
20 purposes of this chapter or support the goals of this chapter through  
21 research and monitoring except:

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

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

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

30       The department may issue a special operating authorization for  
31 passenger vessels conducting or assisting in research and testing  
32 activities to determine the presence of invasive species in ballast  
33 water collected in the waters of southeast Alaska north of latitude  
34 fifty-four degrees thirty minutes north to sixty-one degrees ten  
35 minutes north, extending to longitude one hundred forty-nine degrees

1 thirty minutes west. Such testing and research shall be reviewed by  
2 the ballast water work group and the findings included in the report to  
3 the legislature referenced in section 12 of this act.

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

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

10 Wherever the words "waters of the state" shall be used in this  
11 chapter, they shall be construed to include lakes, rivers, ponds,  
12 streams, inland waters, underground waters, salt waters and all other  
13 surface waters and watercourses within the jurisdiction of the state of  
14 Washington.

15 Whenever the word "pollution" is used in this chapter, it shall be  
16 construed to mean such contamination, or other alteration of the  
17 physical, chemical or biological properties, of any waters of the  
18 state, including change in temperature, taste, color, turbidity, or  
19 odor of the waters, or such discharge of any liquid, gaseous, solid,  
20 radioactive, or other substance into any waters of the state as will or  
21 is likely to create a nuisance or render such waters harmful,  
22 detrimental or injurious to the public health, safety or welfare, or to  
23 domestic, commercial, industrial, agricultural, recreational, or other  
24 legitimate beneficial uses, or to livestock, wild animals, birds, fish  
25 or other aquatic life. "Pollution" shall not include emergency  
26 discharge of ballast water as provided under RCW 77.120.030(4).

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

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

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

33 Whenever the words "general sewer plan" are used in this chapter  
34 they shall be construed to include all sewerage general plans, sewer  
35 general comprehensive plans, plans for a system of sewerage, and other  
36 plans for sewer systems adopted by a local government entity including

1 but not limited to cities, towns, public utility districts, and water-  
2 sewer districts.

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

5 The department shall have the jurisdiction to control and prevent  
6 the pollution of streams, lakes, rivers, ponds, inland waters, salt  
7 waters, water courses, and other surface and underground waters of the  
8 state of Washington. The department shall not have jurisdiction over,  
9 and this chapter shall not apply to, emergency discharge of ballast  
10 water as provided under RCW 77.120.030(4).

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

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

15 (1) RCW 77.120.060 (Report to legislature--Results of chapter) and  
16 2002 c 282 s 4 & 2000 c 108 s 7;

17 (2) RCW 77.120.080 (Legislative review of chapter--Recommendations)  
18 and 2000 c 108 s 9; and

19 (3) RCW 77.120.090 (Ballast water information system--Improvements)  
20 and 2002 c 282 s 5.

--- END ---