

Washington AIS Regulations

Wash. Admin. Code Tit. 220, Ch. 220-220 (General Recreational Licensing Rules)

220-220-220 Fishing Contests

- (1) Contest defined: By definition, a fishing contest exists when 6 or more licensed persons fish competitively and determine winners, regardless of prize value.
- (2) Application:
 - (a) Fishing contest permit applications should be submitted to the department by July 1 of each year for contests that are to take place the following calendar year. After July 1, applications must be submitted not less than 30 days prior to the date for which the contest is proposed.
 - (b) Applications must include the permit fee required by RCW 77.65.480. The fee will be returned if the permit is denied. No more than seven permits will be issued to any one permittee during a calendar year.
 - (c) For purposes of application for a fishing contest permit, ‘permittee’ means a ‘person’ as defined in RCW 77.08.010. All applications from a permittee must be in a single name.
- (3) Approval:
 - (a) Fishing contests which adversely affect fish or wildlife resources or other recreational opportunity may be denied.
 - (b) Contests will not be allowed on sea-run cutthroat trout, wild steelhead, Dolly Varden or bull trout.
 - (c) During fishing contests, where anglers target tiger muskies, no retention of caught fish is allowed. Tiger muskies may be caught, measured for length, photographed and all fish must be immediately released alive.
- (4) Prize value: Total prize value per contest will not exceed \$5,000 when trout, steelhead, char, whitefish, grayling, tiger muskie, or kokanee are included as target species; provided that contests wherein other species not listed above are targeted, or where bass or walleye are the targeted species and at least 90 percent of bass or walleye are released alive and in good condition after the contest, may qualify for no limitation on amount of prize.
- (5) Legal requirements, all contests:
 - (a) Fishing contest permits must be in the possession of the contest sponsor or official at the contest site.

- (b) Contests are restricted to the species and waters approved on the permit. Only those species listed as a target of the contest may be retained by contest participants during bass or walleye contests where all contestants fish at the same time and place.
- (c) Sponsors must report contest information requested by the department within 30 days after the contest has ended. Subsequent contest permits will not be issued for one year after the date of the contest for which the report was not returned if this requirement is not fulfilled.
- (d) Contest participants may not restrict public access at boat launches.
- (e) Contests for bass and walleye where participants expect to fish at the same time from boats on lakes or reservoirs will not last longer than four consecutive days and have the following limits per water:

Acres	Contests per day	Boats per contest day
Less than 300	1	15
301 – 3,000	1	35
3,001 – 6,000	2	75
6,001 – 10,000	2	120
More than 10,000	3	250

* No more than four weekend days per month nor more than two weekends per month may be scheduled on any water when contestants fish at the same time, and are allowed to fish from boats.

- (f) It is unlawful for the fishing contest permittee or any of the contest participants to fail to comply with the conditions of the fishing contest permit, or of general fishing rules not specifically exempted by this permit. Failure of the permittee or any of the contestants to comply with all provisions of the contest permit or of other fishing regulations during a contest may lead to revocation of the permit and result in denial of fishing contest permits to the permittee and related organizations or individuals sponsoring contests for two years.
- (6) Special regulations, bass and walleye contests:

- (a) In any contest targeting either bass or walleye, all live bass or walleye must be released alive into the water from which they were caught after being weighed and/or measured. At the end of each day's competition, if the mortality of target fish caught that day exceeds 10%, the contest will be suspended. Suspended contests may be continued (within assigned permit dates) only if the cause of the high mortality can be positively identified, and the cause of the mortality (high waves, equipment deficiency, etc.) ceases or is corrected by contest officials.
- (b) During bass and walleye contests only, participants may continue to fish while holding up to five fish in possession, as long as one fish is released immediately upon catching a fish

which would make the angler in excess of five fish if kept. The fish released may come either from the one just caught, or from the livewell, but at no time may the angler have more than five fish in the livewell.

- (c) During bass contests, contestants may not use live bait.
 - (d) During bass and walleye contests participants may retain up to five bass and walleye of any size to be weighed in. A tournament angler may not be in possession of more than five bass or walleye from the water being fished, except as authorized under (6)(e) below.
 - (e) The contest director or director designee may exceed possession limits for bass or walleye for the purpose of transporting fish from a weigh-in site to an open-water area. During transportation, the transport boat must not leave the water the fish were caught from and a copy of the contest permit must be on board during actual fish transport.
 - (f) Boat identification: All boats used for fishing in bass and walleye contests must be clearly identified according to criteria established by the department.
- (7) Aquatic invasive species decontamination. Prior to launching into any Washington state body of water:
- (a) All contest participants are required to sign an aquatic invasive species decontamination statement that their boats and/or boat trailers have or have not been in physical contact with any waters outside of Washington state for thirty days immediately preceding the contest and, if the boat and/or trailer has been in contact with such waters, the participant must complete an aquatic invasive species decontamination report indicating that the following actions have been taken:
 - i. A physical inspection has been made of the hull, motor, trailer, livewell and bilge by the contest director or designee, according to criteria established by the department; and
 - ii. Any aquatic invasive species, if found, have been disposed of in a garbage container; and
 - iii. The hull, motor, trailer, livewell, and bilge have been decontaminated according to criteria established by the department.
 - (b) The aquatic invasive species decontamination statement and decontamination report shall be submitted to the department as part of the fishing contest report.

220-220-320. Recreational license dealer's fees.

The department and license dealers may charge a license issuance fee as follows:

- (1) Two dollars for the issuance of any of the following fishing licenses:

- (a) A combination license.
 - (b) A saltwater license.
 - (c) A freshwater license.
 - (d) A one-, two-, or three-day temporary fishing license.
 - (e) A family fishing weekend license.
 - (f) A shellfish and seaweed license.
 - (g) A razor clam license.
- (2) Two dollars for the issuance of any of the following hunting licenses:
- (a) A big game combination license.
 - (b) A small game license.
 - (c) A three-consecutive day small game license.
 - (d) A hunter education deferral for a big game license.
 - (e) A hunter education deferral for a small game license.
 - (f) A second animal license.
 - (g) A special hunt license for mountain goat, bighorn sheep, or moose.
 - (h) A Western Washington pheasant license.
 - (i) A three-day Western Washington pheasant license.
- (3) Notwithstanding the provisions of this section, if any two or more licenses are issued at the same time, or the fish and wildlife lands vehicle access pass is issued with any recreational license, the license issuance fee for the document is two dollars. Tags or other endorsements are additive to the two dollar license issuance fee.
- (4) Two dollars for the issuance of an annual discover pass.
- (5) Two dollars for the issuance of an aquatic invasive species prevention permit.
- (6) Fifty cents for the issuance of any of the following:
- (a) A deer, elk, bear, cougar, mountain goat, mountain sheep, moose, or turkey transport tag.
 - (b) An application for a special permit hunt.
 - (c) Migratory bird harvest report cards issued with a hunt authorization.
 - (d) A replacement of substitute special hunting season permit.
 - (e) A migratory bird permit.
 - (f) Additional fishing catch record cards.
 - (g) A Puget Sound crab endorsement.
 - (h) A temporary Puget Sound crab endorsement.
 - (i) A two-pole endorsement.
 - (j) A one-day discover pass.
 - (k) Raffle tickets.

Wash. Admin. Code Tit. 220, Ch. 220-450 (Wildlife in Captivity and Wildlife Rehabilitation)

220-450-010. Criteria for planting aquatic plants and releasing wildlife.

(1) Release by persons other than the director. It is unlawful for persons other than the director to plant aquatic plants or release any species, subspecies, or hybrids of animals which do not already exist in the wild in Washington. If such species, subspecies, or hybrid does already exist in the wild in Washington, it may be released within its established range by persons other than the director, but only after obtaining a permit from the director.

(a) Application for a permit must be made on a form provided by the department. It must be submitted at least thirty days prior to acquisition of the wildlife or aquatic plants intended for release or planting, and must provide all information indicated.

(b) Permits will only be issued if the director determines there will be no adverse impact on the wildlife or wildlife habitat of the state.

(c) Each permit shall require that at least thirty days prior to planting or release of wildlife or aquatic plants they must be made available for inspection by the director. It shall be the responsibility of the applicant to show that the wildlife will not pose a disease threat. If the director is not satisfied that the wildlife or aquatic plants do not pose a disease threat, they shall not be released or planted in the state. Director approval for release or planting may be withdrawn for cause.

(d) Each permit shall require that an applicant intending to release wildlife in the state shall report immediately to the director the outbreak of any disease among the wildlife intended to be released. If the director determines that such outbreak presents a threat to the wildlife of the state, the director may immediately order such action as necessary including quarantine or destruction of stock, sterilization of enclosures and facilities, cessation of activities, and disposal of wildlife in a manner satisfactory to the director.

(e) Each permit shall require that wildlife to be released shall not be branded, tattooed, tagged, fin clipped or otherwise marked for identification without approval of the director or as required in WAC 220-416-110.

(f) Legally acquired pheasant of the genus *Phasianus*; gray partridge of the genus *Perdix*; chukar of the genus *Alectoris*; quail of the genus *Callipepla* and *Colinus*; and mallards (*Anas platyrhynchos*) may be released without a permit for purposes of dog training, and hunting pursuant to WAC 220-416-110. Game birds of these species released for these purposes must be acquired from a department facility, a state- or federally licensed game farm facility that has been inspected by a certified veterinarian within the past twelve months, or a facility with current National Poultry Improvement Plan certification. Rock doves and Eurasian collared doves may be released without a permit for purposes of bird dog training.

(2) Release by the director. The director may plant aquatic plants or release animal species, subspecies, or hybrids which have been planted or released previously in Washington if they do not pose a disease threat and if planting or release will not cause adverse impact on the wildlife or wildlife habitat of the state. Before releasing any species, subspecies, or hybrid of animal not already existing in the wild in Washington, the director shall report to the commission on the

planned release, stating the basis for determining that the planned release fulfills the criteria set forth herein. The director may release nonnative species, subspecies, or hybrids not previously released in Washington only if the director in his or her sole discretion has determined that:

- (a) There is no reasonable expectation of adverse impact on the wildlife or wildlife habitat of the state and there is an adequate plan for evaluating such impact following the release;
- (b) The commission has classified the species, subspecies, or hybrids to be released pursuant to RCW 77.12.020;
- (c) Suitable habitat is available;
- (d) The nonnative species, subspecies, or hybrids to be released are free of exotic pathogens;
- (e) The release serves the public interest.

(3) This section does not apply to release of classified or unclassified fish or shellfish by persons who have caught or taken the fish or shellfish, provided the fish or shellfish are released into the water or on the tidelands at the approximate location where taken, except that fishing contest participants may release fish at a contest-designated location in the same body of water from which the fish were taken.

Wash. Admin. Code Tit. 220, Ch. 220-500 (Department Lands – General Rules)

220-500-120. Dumping and sanitation.

- (1) It is unlawful for any person to throw, drop, or leave any discarded object, garbage, trash or rubbish, upon any department lands except into a litter or garbage receptacle or container installed for that purpose on such property. Violation of this subsection is pursuant to RCW 70.93.060, which makes it a class 3 civil infraction to litter in an amount less than or equal to one cubic foot; a misdemeanor to litter in an amount greater than one cubic foot but less than one cubic yard; and a gross misdemeanor to litter in an amount of one cubic yard or more.
- (2) It is unlawful to drain or dump refuse or human waste from any trailer, camper, automobile, other vehicle, or vessel on department lands.
- (3) Except for administrative purposes, it is unlawful to clean or wash any automobile, vessel, or other vehicle on department lands with any substance other than water or biodegradable soaps. This subsection does not apply to cleaning activities to control and prevent the spread of invasive species provided only water is used.

Wash. Admin. Code Tit. 220, Ch. 220-640 (Invasive/Nonnative Species)

220-640-010. Aquatic invasive species--Provisions.

The following provisions apply to all nonnative aquatic animal species except nonnative species in ballast water, which are provided for in chapter 220-650 WAC. The definitions of invasive species, prohibited species and regulated species as used in this section are the same as in RCW 77.135.010.

220-640-011. Failure to stop at mandatory AIS check station--Infraction.

Any person who fails to stop at a mandatory check station is guilty of a gross misdemeanor under RCW 77.15.809; however, if a person has never been previously issued either a citation or warning for this violation, the violation may be issued as an infraction under RCW 77.15.160.

220-640-020. Aquatic invasive species classification.

Prior to or at the time of classifying species by rule as prohibited or regulated, the department, in consultation with the invasive species council, must adopt rules establishing standards for determining invasive risk levels and criteria for determining beneficial use that take into consideration environmental impacts, and especially effects on the preservation of native species, salmon recovery, and threatened or endangered species.

220-640-030. Prohibited level 1 species.

The following species are classified as prohibited level 1 species:

- (1) Molluscs: Family Dreissenidae: Zebra and quagga mussels: *Dreissena polymorpha* and *Dreissena rostriformis bugensis*.
- (2) Crustaceans:
 - (a) Family Grapsidae: Mitten crabs: All members of the genus *Erochier*.
 - (b) Family Portunidae: European green crab, *Carcinus maenas*.
- (3) Fish:
 - (a) Family Channidae: China fish, snakeheads: All members of the genus *Channa*.
 - (b) Family Clariidae: All members of the walking catfish family.
 - (c) Family Cyprinidae:
 - (i) Carp, Bighead, *Hypophthalmichthys nobilis*.
 - (ii) Carp, Black, *Mylopharyngodon piceus*.
 - (iii) Carp, Silver, *Hypophthalmichthys molitrix*.
 - (iv) Carp, Largescale Silver, *Hypophthalmichthys harmandi*.
 - (d) Family Esocidae: Northern pike, *Esox Lucius*.

220-640-040. Prohibited level 2 species.

The following are classified as prohibited level 2 species: None.

220-640-050. Prohibited level 3 species.

The following species are classified as prohibited level 3 species:

(1) Amphibians:

(a) In the family Hylidae: Cricket frog, in the genus *Hyla* species in the group Arborea including: *Hyla annectans*, *Hyla arborea*, *Hyla chinensis*, *Hyla hallowellii*, *Hyla immaculata*, *Hyla japonica*, *Hyla meridionalis*, *Hyla sanchiangensis*, *Hyla simplex*, *Hyla suweonensis*, *Hyla tsinlingensis*, and *Hyla zhaopingensis*.

(b) In the family Pelobatidae, spadefoots, all species of the genus *Pelobates* including *P. cultripes*, *P. fuscus*, *P. syriacus*, and *P. varaldii*. All species of the genus *Scaphiopus* including: *S. couchii*, *S. holbrookii*, and *S. hurterii*. All species of the genus *Spea* including: *S. bombifrons*, *S. hammondii*, and *S. multiplicata* with the exception of the native species: *Spea intermontana* the great basin spadefoot.

(c) In the family Pipidae: African clawed frog, all members of the genera *Silurana*, and *Xenopus*.

(d) In the family Ranidae:

(i) American Bull frog, *Rana* (*Lithobates*) *catesbeiana*.

(ii) Holarctic brown frogs and Palearctic green frogs of the genus *Rana*, including the following: *Rana arvalis* group (*R. arvalis*, *R. chaochiaoensis*, *R. chevronta*); *Rana chensinensis* group (*R. altaica*, *R. chensinensis*, *R. dybowskii*, *R. kukunoris*, *R. kunyuensis*, *R. ornativentris*, *R. pirica*); *Rana graeca* group (*R. graeca*, *R. italica*); *Rana japonica* group (*R. amurensis*, *R. aragonensis*, *R. japonica*, *R. omeimontis*, *R. zhenhaiensis*); the subgenus *Rugosa* (*Rana rugosa*, *Rana emeljanovi*, *Rana tientaiensis*); *Rana tagoi* group (*R. sakuraii*, *R. tagoi*); *Rana temporaria* group (*R. asiatica*, *R. dalmatina*, *R. honnorate*, *R. huanrenensis*, *R. iberica*, *R. latastei*, *R. macrocnemis*, *R. okinavana*, *R. pyrenaica*, *R. tsushimensis*, *R. zhengi*); and in the *Rana Pelophylax* section, the subgenus *Pelophylax* (*R. bedriagae*, *R. bergeri*, *R. cerigensis*, *R. chosenica*, *R. cretensis*, *R. demarchii*, *R. epeirotica*, *R. fukienensis*, *R. grafti*, *R. hubeiensis*, *R. lateralis*, *R. lessonae*, *R. nigrolineata*, *R. nigromaculata*, *R. perezi*, *R. plancyi*, *R. porosa*, *R. ridibunda*, *R. saharica*, *R. shqipericana*, *R. shuchinae*, *R. terentievi*, *R. tenggerensis*); and the *Rana ridibunda*-*Rana lessonae* hybridogenetic complex species *R. esculenta* and *R. hispanica*.

(e) In the family Ambystomatidae: Mole salamanders. In the genus *Ambystomata*: *A. californiense*, *A. laterale*, *A. opacum*, *A. rosaceum*, *A. tigrinum*, except for the native species *A. tigrinum mavortium* Western tiger salamander, and *A. tigrinum melanostictum* Tiger salamander.

(f) In the family Amphiumidae one, two, and three toed salamanders or congo eels: All members of the genus *Amphiuma*.

(g) In the family Cryptobranchidae: Giant salamanders and hellbenders, all members of the genera *Andrias* and *Cryptobranchus*.

(h) In the family Dicamptodontidae, American giant salamanders, all members of the genus *Dicamptodon*, except for the native species: *Dicamptodon tenebrosus*, Pacific giant salamander, and *Dicamptodon copei*, Cope's giant salamander.

(i) In the family Hynobiidae: Mountain salamanders, all members of the genera *Batrachuperus*, *Hynobius*, *Liua*, *Onychodactylus*, *Pachyhynobius*, *Pseudohynobius*, *Ranodon*, and *Salamandrella*.

(j) In the family Plethodontidae, subfamily Desmognathinae: All members of the genus *Desmognathus*, dusky salamander.

(k) In the family Plethodontidae, subfamily Plethodontinae: All members of the genera *Eurycea* (American brook salamanders); *Gyrinophilus* (cave salamanders); *Hemidactylium* (four-toed salamanders); *Hydromantes* and *Pseudotriton* (mud or red salamanders).

(l) In the family Proteidae, mudpuppies, all members of the genus *Necturus* and *Proteus*.

(m) In the family Salamandridae: Newts, all members of the genera *Chioglossa*; *Eichinotriton* (mountain newts); *Euproctus* (European mt. salamander); *Neurergus* (Kurdistan newts); *Notophthalmus* (red-spotted newts); *Pachytriton* (Chinese newts); *Paramesotriton* (warty newts); *Salamandrina* (speckled salamander); *Taricha* except for the native species *Taricha granulosa granulosa* the Northern rough-skin newt, and *Ichthyosaura* and *Triturus* (alpine newts).

(n) In the family Sirenidae, sirens, all species of the genera *Pseudobranchius* and *Siren*.

(2) Reptiles:

(a) In the family Chelydridae, snapping turtles, all species.

(b) In the family Emydidae:

- (i) Chinese pond turtles, all members of the genus *Chinemys*.
- (ii) Pond turtles, all members of the genus *Clemmys*.
- (iii) European pond turtle, *Emys orbicularis*.
- (iv) Asian pond turtle, all members of the genus *Mauremys*.

(c) In the family Trionychidae, American soft shell turtles, all members of the genus *Apalone*.

(3) Crustaceans:

(a) Family Cercopagidae:

- (i) Fish hook water flea, *Cercopagis pengoi*.

- (ii) Spiny water flea, *Bythotrephes cederstroemi*.
 - (b) Family Cambaridae: Crayfish: All genera.
 - (c) Family Parastacidae: Crayfish: All genera except Engaeos, and except the species *Cherax quadricarinatus*, *Cherax papuanus*, and *Cherax tenuimanus*.
 - (d) Family Spheromatidae: Burrowing isopod, *Sphaeroma quoyanum*.
- (4) Fish:
- (a) Family Amiidae: Bowfin, grinnel, or mudfish, *Amia calva*.
 - (b) Family Characidae: Piranha or caribe: All members of the genera *Pygocentrus*, *Rooseveltiella*, and *Serrasalmus*.
 - (c) Family Cyprinidae:
 - (i) Fathead minnow, *Pimephales promelas*.
 - (ii) Carp, Grass (in the diploid form), *Ctenopharyngodon idella*.
 - (iii) Ide, silver orfe or golden orfe, *Leuciscus idus*.
 - (iv) Rudd, *Scardinius erythrothalmus*.
 - (d) Family Gobiidae: Round goby, *Neogobius melanostomus*.
 - (e) Family Lepisosteidae: Gar-pikes: All members of the family.
- (5) Mammals: Family Myocastoridae: Nutria, *Myocastor coypu*.
- (6) Molluscs:
- (a) Family Dreissenidae: All members of the genus Dreissenid except the species zebra mussel, *Dreissena polymorpha*, and the quagga mussel, *Dreissena rostriformis bugensis*.
 - (b) Family Gastropoda: New Zealand mud snail, *Potamopyrgus antipodarum*.

220-640-051. Lawful possession of dead prohibited level 3 species for personal or commercial use--Allowable forms--Records required.

- (1) It is lawful to possess dead prohibited level 3 species for human or animal consumption use. For purpose of this rule, “dead” is defined as the following forms:
- (a) Fully cooked;
 - (b) Frozen solid;
 - (c) Canned or otherwise vacuum-sealed in a container;
 - (d) Preserved by drying, salting, or pickling; or
 - (e) Raw/fresh if the head has been removed and/or all the internal organs have been removed.

- (2) The person or commercial entity must possess the following records upon receiving and while in possession of a prohibited level 3 species in a dead form:
- (a) The records must be in accordance with RCW 77.15.568; and
 - (b) The records must identify:
 - (i) Taxonomic species name or subspecies name to distinguish the subspecies from another prohibited species or a regulated type A species; and
 - (ii) The dead form in which the species was received as listed under subsection (1) of this section.

(3) It is unlawful for any person or commercial entity to receive or possess any live prohibited level 3 species or that does not meet the requirements of subsection (1) of this section.

(4) Any person or commercial entity in possession of a prohibited level 3 species violating this regulation shall be guilty of unlawful use of invasive species in the second degree under RCW 77.15.809.

220-640-060. Regulated Type A species.

The following species are classified regulated Type A species:

(1) Fish:

- (a) All nonnative fish classified as food fish under WAC 220-300-370 and game fish under WAC 220-300-380.
- (b) Family Cichlidae: Tilapia: All members of the genera *Tilapia*, *Oreochromis*, and *Sartheradon*.
- (c) Family Clupeidae: Alewife, *Alosa pseudoharengus*.
- (d) Family Cyprinidae:
 - (i) Common carp, koi, *Cyprinus carpio*.
 - (ii) Goldfish, *Carassius auratus*.
 - (iii) Tench, *Tinca tinca*.
 - (iv) Grass carp (in the triploid form), *Ctenopharyngodon idella*.
- (e) Family Poeciliidae: Mosquito fish, *Gambusia affinis*.

(2) Shellfish: All nonnative shellfish classified under WAC 220-320-010.

220-640-070. Regulated Type B species.

The following species are automatically classified as regulated Type B species and do not require listing by rule:

- (1) A nonnative aquatic animal species not listed under WAC 220-640-030 Prohibited level 1 species, WAC 220-640-040 Prohibited level 2 species, WAC 220-640-050 Prohibited level 3 species, or WAC 220-640-060 Regulated Type A species; and
- (2) A nonnative aquatic animal species possessed for personal or commercial purposes, such as for aquariums, live food markets, or as nondomesticated pets.

220-640-080. Regulated Type C species.

The following species are classified as regulated Type C species and do not require listing by rule:

- (1) A nonnative aquatic animal species not listed under WAC 220-640-030 Prohibited level 1 species, WAC 220-640-040 Prohibited level 2 species, WAC 220-640-050 Prohibited level 3 species, or WAC 220-640-060 Regulated Type A species; and
- (2) All other nonnative aquatic animal species that do not meet the criteria for automatic classification as a regulated Type B species.

220-640-090. Repealed

220-640-100. Scientific research/display permits and monitoring and control programs-- Requirements for possession of prohibited species.

It is unlawful to introduce into the state or possess a prohibited level 1, level 2, or level 3 species except as provided in this section.

- (1) Scientific research or display permit: The director may authorize, by prior written permit, a person to possess prohibited level 1, prohibited level 2, or prohibited level 3 species specimens for scientific research or display, provided that:
 - (a) Specimens are confined to a secure facility, defined as an enclosure that will prevent the escape or release of the prohibited species to include all stages of species development and body parts;
 - (b) Facility is not a natural watercourse, and is also inaccessible to wildlife or other animals that could transport prohibited species to include all stages of species development and body parts;
 - (c) Specimens are not transferred to any other facility without written approval by the director or designee;
 - (d) All zebra and quagga mussels are incinerated or chemically preserved at the conclusion of the project, and the enclosure, holding waters and all equipment are decontaminated. All other prohibited species must be killed at the conclusion of the project and either chemically preserved or disposed of in a landfill; and

- (e) The permittee must provide an annual report to the department, no later than January 31st of the following year, on a form provided by the department, describing the number, size, and location of prohibited species enclosures and general nature of the research.
- (2) Monitoring and control programs: The director may authorize persons working within the scope and supervision of a department-sponsored monitoring and control program to capture, possess and destroy prohibited level 1, prohibited level 2, or prohibited level 3 species specimens provided that:
 - (a) The persons have completed a mandatory training program and are certified by the department;
 - (b) The persons have a permit authorized by the director or designee in possession;
 - (c) All prohibited species are disposed of in accordance with the monitoring and control program; and
 - (d) Participants must submit a report to the department within thirty days of any monitoring or control activity in accordance with the specifications outlined in the monitoring and control program.

220-640-110. Importation of live aquatic organisms--Required certification of “zebra/quagga mussel free.”

- (1) It is unlawful to import live aquatic organisms, including plants, for release into state waters from any state or Canadian province east of the Continental Divide without each importation being accompanied by a zebra mussel (*Dreissena polymorpha*)/Quagga mussel (*Dreissena rostriformis bugensis*)-free certificate issued by the department and signed by the supplier of the aquatic organisms.
- (2) The original receiver in the state of Washington of the shipment of aquatic organisms is required to retain the zebra and quagga mussel-free certificate for two years.
- (3) Secondary receivers, while in possession of live aquatic organisms, are required to retain invoices or other records showing who the original receiver was.

220-640-120. Capture of prohibited species in Washington waters--Requirements.

- (1) Capture of prohibited species in state waters: Any Prohibited level 1, level 2, or level 3 species that are captured in state waters must be:
 - (a) Immediately killed and removed from within the riparian perimeter of the body of water;
or
 - (b) Immediately returned to the water from which the species was captured.

- (2) The riparian perimeter includes all boat launch, park, private residences, or commercial businesses within a quarter-mile from the edge of the state water.
- (3) It is lawful to possess dead prohibited species taken from state waters and it is lawful to possess chemically preserved nonvertebrate prohibited species from any source.
- (4) It is unlawful to use live or dead prohibited species as bait.

220-640-130. Allowable possession of prohibited species if acquired prior to classification-- Requirement of documentation.

A person who possessed a prohibited level 1, level 2, or level 3 species prior to the time the species was classified as prohibited may continue to hold the animal or animals for the life of the animals, provided that:

- (1) The person must maintain proof of possession prior to the classification.
- (2) The animals may not be transferred to another owner within the state.
- (3) The person must comply with all provisions of this section.
- (4) The animals must be prevented from reproducing, or if prevention is impracticable, the progeny must be destroyed.

Wash. Admin. Code Tit. 220, Ch. 220-650 (Ballast Water)

220-650-010. Purpose, stakeholder consultation, and cooperative management.

(1) Purpose.

- (a) These rules apply to vessels as recognized under RCW 77.120.020. Owners or operators of vessels to which this chapter does not apply are encouraged to voluntarily comply to the extent possible.
- (b) These rules are provided to fulfill the legislative general directives under chapter 77.120 RCW and the specific directives under RCW 77.120.030(3), “to ensure that the discharge of ballast water poses minimal risk of introducing nonindigenous species.”
- (c) As directed by statute and in response to scientific evidence gathered since the state ballast water management program was first established in 2000, the approach to meet this directive is to encourage vessel owners or operators to reduce the volume of ballast water discharged, phase-out the ballast water open sea exchange requirement, and replace open sea exchange with an effective ballast water discharge performance standard.

- (d) The legislature, in recognizing the complexity, evolving science, and technological challenges of ballast water management, gave the department broad authority under RCW 77.120.030(3) and 77.120.040(5) to develop discharge standards that pose minimum risk of introducing nonindigenous species. To assure the legislature that this authority is applied in a transparent and accountable manner, the department met the three key conditions required by statute. First, the rules were developed in consultation with advisors from the regulated industries and potentially affected parties as required in RCW 77.120.040(5) and as identified in subsection (2) of this section. Second, the rules were developed in consideration of the extent to which the requirement for a discharge performance standard is technologically and practically feasible. Third, the rules were developed to complement, to the extent practical and appropriate, current ballast water management regulations of the United States Coast Guard (USCG), the International Maritime Organization (IMO), and the state of Oregon.
- (e) In the absence of a national discharge performance standard, these rules were developed to complement, and promote consistency along the west coast in accordance with, the West Coast Governor's Agreement on Ocean Health 2008 Action Plan, Action 2.3, and the Puget Sound Partnership's 2008 Action Agenda, Priority A.5.2, Near-term Actions 1 and 2. When a national discharge standard is developed, the department will assess these rules for consistency, as practical and appropriate.

(2) **Ballast water work group consultation.** The department will establish the ballast water work group (BWWG) or a similar forum to advise the department on developing, revising, and implementing chapter 77.120 RCW and this chapter regarding ballast water management. The department, at a minimum, will invite the participation of shipping interests, ports, shellfish growers, fisheries, environmental interests, citizens who have knowledge of the issues, and appropriate governmental representatives, including the USCG and the tribes per RCW 77.120.040(5).

To assist the department in making every reasonable effort to protect state waters from introduction of nonindigenous species, the BWWG may advise the department on:

- (a) Issues to bring forward to the state invasive species council;
- (b) Developing and implementing the ballast water management plan;
- (c) Providing science-based recommendations and technical information;
- (d) Adjusting laws, rules, or policies if and when necessary or advisable;
- (e) Enhancing the predictability and stability of the process so that stakeholders can anticipate and prepare for change; and
- (f) Working with regional and national ballast water regulators to strive for a coordinated and integrated program.

(3) **Cooperative ballast water management.** The department communicates and cooperates with the USCG and other federal and state agencies to standardize regulations to the extent practical and appropriate, minimize duplication of efforts, and share information. The goal is to provide transparency and accountability in the regulatory process, protect state resources, and facilitate collaboration among federal and state agencies. The department also

communicates and cooperates to the extent practical and appropriate with international ballast water management entities. Agencies that the department works with directly include:

- (a) The Washington department of ecology. Pursuant to RCW 77.120.030(3), the department of fish and wildlife will consult and coordinate with the department of ecology on Clean Water Act issues related to ballast water management.
- (b) The Washington department of health. The department of fish and wildlife will consult with the department of health on public health issues related to ballast water management.
- (c) The Puget Sound partnership. Pursuant to chapter 90.71 RCW, the department will consult and coordinate with the Puget Sound partnership on biennial budget needs related to the ballast water program, cross-border coordination, policy, and research and monitoring needs to protect and restore Puget Sound by 2020.
- (d) Tribes. Pursuant to RCW 77.120.040(5), the department of fish and wildlife will consult and coordinate with federally recognized Indian tribes in the state of Washington on ballast water management issues to assist in the protection of aquatic resources. The department will inform tribes of any ballast water management regulatory changes. The department also will notify tribes of any ballast water technologies as accepted under WAC 220-650-100 and supply the tribes with available supporting documentation.
- (e) State of Oregon. Pursuant to RCW 77.120.040(5), the department will consult and coordinate with the state of Oregon on ballast water management in the Columbia River system. The department will strive to enter into cooperative management agreements with the state of Oregon to implement provisions of Washington, Oregon, and other appropriate federal ballast water laws. The agreements may include, but are not limited to, arrangements for cooperative enforcement, inspection, research, and monitoring.
- (f) United States Coast Guard (USCG). Pursuant to RCW 77.120.030(3) and 77.120.040 (5)(a), the department will strive to enter into cooperative management agreements with the USCG to implement ballast water management objectives. The agreements may include, but are not limited to, arrangements for cooperative enforcement, inspection, research, and monitoring.
- (g) United States Environmental Protection Agency (EPA). The department, as practical and appropriate, will consult and coordinate with the EPA on Clean Water Act issues related to ballast water management.
- (h) Pacific Coast states. Pursuant to RCW 77.120.040 (5)(a), the department will consult and coordinate with the Pacific Coast states of Alaska, California, Hawaii, and Oregon on ballast water issues. In general, this will be through the Pacific ballast water group or a similar cooperative forum.

- (i) Canada. As practical and appropriate, the department will strive for consistency and cooperation with the Canadian government through the province of British Columbia or other appropriate venues to manage ballast water risks.
 - (j) International Maritime Organization (IMO). As practical and appropriate, the department will strive for consistency and cooperation with the IMO to manage ballast water risks.
- (4) **Other state and federal laws.** Nothing in this chapter shall supersede more stringent state or federal regulations, including public health and Clean Water Act criteria. Nothing in these regulations negates the need to comply with other state and federal regulations regarding the management of ballast water or any other vessel-related discharges.

220-650-020. Definitions.

- (1) **In general.** The definitions herein are provided solely for the purposes of ballast water management unless otherwise noted. Nonindigenous species and ballast water management definitions from RCW 77.08.010 and 77.120.010 are included as noted to provide a comprehensive listing of terms used in this chapter.
- (2) **‘Ballast tank’** means any vessel tank or hold used for carrying ballast water, whether or not the tank or hold was designed for that purpose.
- (3) **‘Ballast water’** means any water and matter taken on board a vessel to control or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried. This includes matter suspended in such water per USCG regulations under Title 33 C.F.R., Part 151.1504.
- (4) **‘Ballast water capacity’** means the total volumetric capacity of any tanks, spaces, or compartments on a vessel used for carrying, loading or discharging ballast water, including any multiuse tank, space or compartment designed to allow carriage of ballast water.
- (5) **‘Ballast Water Reporting Form’** or **‘reporting form’** means either a USCG or an IMO ballast water reporting form pursuant to USCG regulations under Title 33 C.F.R., Part 151.2045.
- (6) **‘Commission’** means the state fish and wildlife commission.
- (7) **‘Concurrent waters of the Columbia River’** means those waters of the Columbia River that coincide with the Washington-Oregon state boundary.
- (8) **‘Constructed’** means a stage of vessel construction wherein:
 - (a) The keel is laid;
 - (b) Construction identifiable with a specific vessel begins;
 - (c) Assembly of the vessel has commenced and comprises at least fifty tons or one percent of the estimated mass of all structural material, whichever is less; or
 - (d) The vessel undergoes a major conversion.

- (9) **‘Department’** means the Washington department of fish and wildlife.
- (10) **‘Detectable’** means a scientifically credible measurement as determined by the department, resulting in a mathematical count of aquatic organisms greater than zero or an approved measurement of a surrogate criterion, and assumes:
- (a) Measurements reflect a specific point in time;
 - (b) Organisms may exist that are below detectable or reasonably credible limits;
 - (c) The term is temporal and likely to require adjustment as scientific methods improve in ability to measure the criteria;
 - (d) A reasonableness criteria also applies to the level of effort to find and enumerate organisms in large volumes of ballast water; and
 - (e) Measurements resulting in a mathematical count of zero are considered to have no detectable organisms.
- (11) **‘Exchange’** means to replace the water in a ballast tank using either flow through exchange, empty/refill exchange, or other exchange methodology recommended or required under USCG Title 33 C.F.R., Part 151.2035.
- (12) **‘Gross tons,’ ‘GT,’ or ‘GT ITC’** means a vessel's gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969 or any successor convention, as required under USCG Navigation and Vessel Circular No. 11-93, CH. 3, Section 2. GT is the metric used on the USCG ballast water reporting form, used to qualify a ‘vessel’ under this chapter, and is generally calculated differently than other tonnage metrics such as gross regulatory tons, gross registered tons (GRT), net tons, displacement, or deadweight. It is the vessel owner's or operator's responsibility to determine his or her vessel's applicability to this chapter if using alternative tonnage measurements, as there are no standard conversion metrics to GT.
- (13) **‘International Maritime Organization’ or ‘IMO’** means a specialized agency of the United Nations with one hundred sixty-seven Member States and three Associate Members and based in the United Kingdom. Reference to IMO herein applies to its International Convention for the Control and Management of Ships' Ballast Water and Sediments adopted in 2004.
- (14) **‘Living organism’** means a whole or minimally damaged organism that exhibits signs of viability such as energy, activity, reproductive ability, or function at the time of observation.
- (15) **‘Major conversion’** means a conversion of an existing vessel that:
- (a) Changes its ballast water carrying capacity by fifteen percent or greater;
 - (b) Changes the vessel type;
 - (c) As determined by the department, is projected to prolong its life by ten years or more; or

- (d) Results in modifications to its ballast water system other than component replacement-in-kind. Conversion of a vessel to meet the provisions of this chapter will not be deemed to constitute a major conversion.
- (16) **‘Nonindigenous species’** means any species or other viable biological material that enters an ecosystem beyond its natural range. This also includes the seeds, eggs, spores, and other biological material capable of reproducing that species, or any other viable biological material that enters an ecosystem beyond its natural range.
- (17) **‘Person’** means an individual, firm, public or private corporation, partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.
- (18) **‘Port’** means a terminal or group of terminals or any place or facility that has been designated as a port by a USCG captain of the port. For purposes of this chapter, port may also mean a commonly associated anchorage or a common anchorage in the Columbia river if the next destination port is not known to the vessel owner or operator.
- (19) **‘Recognized marine trade association’** means those trade associations in Washington state that promote improved ballast water management practices by educating their members on the provisions of this chapter, participating in regional ballast water coordination through the Pacific ballast water group, assisting the department in the collection of ballast water exchange forms, and the monitoring of ballast water. This includes members of the Puget Sound marine committee for Puget Sound and the Columbia River Steamship Operators Association for the Columbia River or other marine trade association that meets the same criteria.
- (20) **‘Sediments’** means any matter settled out of ballast water within a vessel.
- (21) **‘Technical assistance’** means information or training provided by the department in a nonenforcement capacity on ballast water laws, rules, and compliance methods and technologies.
- (22) **‘Treatment’** means the mechanical, physical, chemical, and biological technology or processes used, either singularly or in combination, to remove, render harmless, or avoid the discharge of living organisms and pathogens within ballast water and sediment.
- (23) **‘Untreated ballast water’** means exchanged or unexchanged ballast water that has not undergone treatment.
- (24) **‘Vessel’** means a ship, boat, barge, or other floating craft of three hundred gross tons or more, United States and foreign, carrying, or capable of carrying, ballast water into the coastal waters of the state after operating outside of the coastal waters of the state, except those vessels described in RCW 77.120.020.

- (25) **‘Vessel owner’** or **‘operator’** means the owner, operator, master, or person-in-charge of a vessel.
- (26) **‘Voyage’** means any transit by a vessel destined for any Washington port.
- (27) **‘Waters of the state’** means any surface waters, including internal waters contiguous to state shorelines, within the boundaries of the state.

220-650-030. Reporting forms, waivers, safety exemptions, and recordkeeping.

(1) **Purpose.** These rules apply to all vessels subject to ballast water management provisions under chapter 77.120 RCW. The intent of the state's ballast water management program is to minimize the risk of introducing nonindigenous species from ballast water and ballast tank sediment into Washington state waters. Reporting and recordkeeping are designed to assess a vessel owner or operator's compliance with, and monitor the effectiveness of, these regulations as defined in RCW 77.120.030, 77.120.040, 77.120.070, and 77.120.100. Nothing in this section negates the need to comply with any other state or federal regulations.

(2) **Ballast water reporting form requirements.**

(a) In general. Vessel owners or operators shall file ballast water management information using a Ballast Water Reporting Form (reporting form) that is acceptable to the USCG and prior to entering waters of the state whether or not they intend to discharge ballast water. Refer to WAC 220-650-070 for interim exchange, WAC 220-650-080 for interim exchange alternative, and WAC 220-650-090 for discharge performance standard requirements. Once within waters of the state, vessel owners or operators shall file reporting forms for voyages between state ports. This is necessary for timely enforcement of regulations and to allow risk analysis by port. Vessel owners or operators who do not regularly discharge ballast water may apply for a reporting form waiver as directed in subsection (3) of this section.

Reporting forms will be used by the department to identify both random and high risk vessels for inspection and to monitor overall compliance, quantities, distribution, voyage patterns and other information associated with potential vessel-related introductions of nonindigenous species.

(b) Prior to entering waters of the state. At least twenty-four hours prior to entering waters of the state, vessel owners or operators must file a reporting form with the department. If filing twenty-four hours prior is not possible due to voyage distance or change in destination, vessel owners or operators must file at the time of first known or predictable Washington port visit. A vessel owner or operator filing a reporting form for a Columbia River visit and stating its destination as a state of Oregon port must file a new reporting form if its itinerary changes to a Washington port or for a subsequent voyage from an Oregon port to a Washington port. The reporting form should be completed according to the following instructions:

- (i) The reporting form should only have information related to discharges expected into Washington state waters.
- (ii) If submitting a USCG reporting form, it must be completed per USCG regulation under Title 33 C.F.R., Part 151.2041, for each port visit.
- (iii) If submitting an IMO reporting form, it must be completed per USCG regulation under Title 33 C.F.R., Part 151.2045(11), and additional information must be included, showing the total number of tanks being discharged.

(c) Within waters of the state. After meeting the requirements of (b) of this subsection, a new reporting form must be filed by the vessel owner or operator for each subsequent port, if any, in waters of the state. Vessel owners or operators must file a new reporting form at least twenty-four hours prior to arrival at the next Washington port or at the time of first known or predictable port visit if filing twenty-four hours prior is not possible due to voyage distance or change in destination. A new reporting form does not need to be filed where:

- (i) A vessel moves multiple times between an anchorage and the same port for which the discharge is accurately attributed on the reporting form; or
- (ii) The ballast water or sediment to be discharged was taken up at the same port from where it originated within a single port visit and did not mix with ballast water or sediment from areas other than open sea waters.

(d) Amended reporting forms. Vessel owners or operators shall file an amended reporting form where there are information errors or where the results of actual operations are different from the information contained in their last filed reporting form under (b) or (c) of this subsection. An amended reporting form shall be filed at the time of first known or predictable change of destination, and immediately upon the completion of discharge operations resulting in changes to actual volume of ballast water discharged.

(e) Submission. Reporting forms must be submitted in a standard electronic format to the department by email at ballastwater@dfw.wa.gov or, if email is not possible, by fax to 360-902-2943. Reporting forms that cannot be opened electronically or are illegible may not be considered as received in a timely manner and requires filing a new reporting form. Vessel owners or operators who rely on a third party to collect and forward ballast water reporting forms are responsible for ensuring that the department receives the ballast water management information as required in this subsection.

(3) Ballast Water Reporting Form waiver.

(a) In general. Vessel owners or operators who do not, under normal operating conditions, discharge ballast water may request a reporting form waiver from the department. A waiver request form letter, as provided by the department, may be requested for multiple vessels under the authority of a single vessel owner or operator. The waiver request must be received by the department at least thirty days prior to a vessel entering Washington waters and does not release the vessel owners or operators from meeting other federal or state ballast water reporting laws.

(b) Contents. The waiver becomes effective upon department approval. The department will approve or deny approval of the request within thirty days of receipt. The letter must include the following information:

- (i) Vessel name(s), identification number(s) (International Maritime Organization, Lloyds of London, or USCG registry number), owner, agent, and vessel type(s);
- (ii) A statement that the vessel owner or operator will not discharge ballast water into Washington state waters;
- (iii) A statement that the vessel owner or operator will comply with the requirements in subsection (2) of this section if discharge becomes necessary;
- (iv) A statement that the vessel owner or operator of the vessel(s) will file for a new waiver if there are any changes in the information required in this subsection; and
- (v) The signature of the vessel owner or operator.

(c) Submission. Send the completed form to the department by email to ballastwater@dfw.wa.gov or, if email is not possible, by fax to 360-902-2943, or by U.S. mail to: WDFW, AIS Unit, P.O. Box 43200, Olympia, Washington 98504-3200, USA. Incomplete forms will be returned and waiver approval denied until a completed form has been received.

(d) Availability. Vessel owners or operators shall maintain a copy of the waiver in the vessel's ballast water management plan.

(4) Vessels claiming safety exemptions.

(a) In general. Vessel owners or operators claiming a safety exemption under RCW 77.120.030(4) must file a reporting form and provide sufficient additional information for the department to evaluate the claim, determine whether an alternative exchange or emergency ballast water treatment strategy is warranted, and determine whether a temporary compliance plan is necessary to prevent or reduce the likelihood of future claims. The intent of these rules is to prevent or minimize the discharge of unexchanged or untreated ballast water.

(b) Reporting requirements. Vessel owners or operators claiming a safety exemption must notify the department of their intent to do so on the ballast water reporting form as required in subsection (2) of this section. Notification requires writing the words "SAFETY EXEMPTION" on the form where it asks "If no ballast treatment conducted, state reason why not:" and stating the cause as either "ADVERSE WEATHER," "VESSEL DESIGN LIMITATION," "EQUIPMENT FAILURE," or "EXTRAORDINARY CONDITION." In addition:

- (i) Vessel owners or operators are not required to request a safety exemption if the vessel does not intend to discharge unexchanged or untreated ballast water and the vessel owner or operator follows the reporting requirements under subsection (2) of this section.
- (ii) Vessel owners or operators may rescind a safety exemption claim by filing an amended ballast water reporting form and notifying the department as required in subsection (2)(d) of this section.

- (iii) Vessel owners or operators required to meet discharge performance standards under WAC 220-650-090 and claiming a safety exemption due to equipment failure must conduct an open sea exchange or provide evidence to establish why that was not possible.
- (iv) The department will waive the twenty-four hour advance notification as required in subsection (2) of this section for circumstances where the vessel, crew or passengers are in imminent danger. In these situations, the vessel owner or operator must file the ballast water reporting form at the earliest opportunity.

(c) Department review. The department will review safety exemption claims and determine whether a compliance plan and/or alternative strategy per WAC 220-650-060 is required to minimize potential discharge of future unexchanged ballast water until compliance with this section can be met. Reviews will be completed within sixty days of safety exemption notification on their ballast water reporting form.

(d) Discharge authorization requirement. Except where discharging is necessary to prevent jeopardy to the vessel, crew or passengers, the vessel owner or operator shall not discharge unexchanged or untreated ballast water without department authorization. The department will determine and require the vessel owner or operator to conduct one or more of the following actions:

- (i) Hold its ballast water;
- (ii) Conduct an emergency ballast water treatment response;
- (iii) Discharge into a reception facility;
- (iv) Discharge into specified alternative waters; or
- (v) Discharge only the minimum amount necessary to complete a safe operation.

(e) Safety exemption filing fee. The department will assess a safety exemption filing fee of five hundred dollars for administrative costs to assess compliance, unless covered under WAC 220-650-060, or within the sixty-day notice period under WAC 220-650-060.

Furthermore:

- (i) Payment of the fee is due within thirty days after the date of the written notice by the department.
- (ii) The fee is not a formal enforcement action and is a public record.
- (iii) The fee may be withdrawn if the vessel owner or operator files an amended report by the payment deadline stating that no ballast water or sediment was discharged into state waters.

(5) Ballast water management plan.

(a) In general. Vessel owners or operators shall develop, and maintain on board, a ballast water management plan that has been developed specifically for the vessel and that will allow those responsible for the plan's implementation to understand and follow the vessel's ballast water management strategy. The plans of unmanned barges may be kept on board the towing vessel or incorporated into the towing vessel's own plan. The plan should detail safe and effective shipboard procedures for ballast water management, and the central elements of the plan should be the processes, equipment, and vessel safety measures used for implementing the vessel's ballast water management strategy and

following the required ballast water management practices. Vessel owners and operators should seek assistance from their class societies, marine surveyors, or other appropriate marine services during the development of the plan.

- (b) Contents. At a minimum, the plan should include:
- (i) Detailed ballast water management safety procedures;
 - (ii) Actions for implementing the mandatory ballast water management requirements and practices;
 - (iii) Detailed fouling maintenance and sediment removal procedures for areas on the vessel where ballast water can be carried;
 - (iv) Identification of the designated officer(s) in charge of ensuring that the plan is properly implemented;
 - (v) Detailed reporting requirements and procedures for ports in Washington state where the vessel may visit; and
 - (vi) A translation of the plan into English if the ship's working language is another language.

(c) Training. The vessel owners or operators and appropriate crew must be trained in the application of the vessel's ballast water and sediment management strategies.

(d) Availability. Vessel owners or operators shall make the ballast water management plan readily available for examination by the department at all reasonable times. The vessel owner or operator shall readily transmit the management plan or any other specific information to the department regarding the vessel's ballast operations as the department may request.

(e) Alternative means of recordkeeping. The ballast water management plan may be an electronically recorded system or integrated into another management plan or system. At a minimum, any alternative method shall meet the provisions of this subsection.

(f) Alternative means of recordkeeping. The ballast water log or record book may be an electronically recorded system or integrated into another record book or system. At a minimum, any alternative method shall meet the provisions of this subsection.

(6) Ballast water log or record book.

(a) In general. Vessel owners or operators shall record all ballast water and sediment management operations in the vessel's ballast water log, record book, or other suitable documentation system. This information is used by the department to assess compliance, review ballast water and sediment management history, and recommend practices that can improve ballast water management compliance and efficiency.

(b) Content. Vessel owners or operators shall maintain a version of the ballast water log, record book, or other suitable documentation system in English on board the vessel that, at a minimum:

- (i) Records each operation involving ballast water or sediment management;

- (ii) Describes each such operation, including the location and circumstances of, and the reason for, the operation;
- (iii) Records the exact time and position of the start and stop of ballast water exchange or treatment operations for each tank;
- (iv) Describes the nature and circumstances of any situation under which any operation was conducted under a safety exemption set forth in subsection (4) of this section; and
- (v) Records ballast water and sediment management training.

(c) **Availability.** Vessel owners or operators shall make the ballast water log or record book readily available for examination by the department at all reasonable times. The vessel owner or operator shall transmit such information to the department regarding the ballast operations of the vessel as the department may require.

(d) **Retention period.** The ballast water log or record book shall be retained on board the vessel for a minimum of two years after the date on which the last entry in the book is made.

(e) **Required signatures.** The department will require, at a minimum, that each completed page and each completed vessel exchange or treatment operation in the ballast water log or record book be signed and dated by the vessel owner or operator or responsible officer; and that such owner, operator, or responsible officer attests to the accuracy of the information provided and certifies compliance with the requirements of this subsection.

(f) **Alternative means of recordkeeping.** The ballast water log or record book may be an electronically recorded system or integrated into another record book or system. At a minimum, any alternative method shall meet the provisions of this subsection.

220-650-040. Vessel inspections.

(1) **In general.** Department employees shall have the right to board and inspect vessels, without advance notice, to provide technical assistance, assess compliance, and enforce the requirements of this chapter as provided in RCW 77.120.070, so long as such inspections are conducted in accordance with the standards set forth herein.

The department intends, as resources allow, to board between five and ten percent of all vessels arriving at Washington ports each year, with a priority for inspections of vessels carrying high risk ballast water as described in WAC 220-650-050. Multiple boardings of an individual vessel may occur throughout the year, depending on the vessel's risk and compliance history.

(2) **Conditions.** Department inspections shall be conducted under the following conditions:

(a) **Authorized department inspectors:** Inspections shall be conducted only by department employees, agents, or contractors specifically authorized by the department to conduct such inspections.

(b) **Time:** Inspections may be conducted at any time, due to the twenty-four hour nature of the regulated industry. In general, the department will not unduly interrupt normal cargo operations of the vessel. However, the department may interrupt vessel cargo operations

where facts indicate that the discharge of unexchanged or untreated ballast water or sediment is occurring or is likely imminent.

(c) Location: Inspections may be conducted when the vessel is at anchor within waters of the state or in port within waters of the state.

(d) Scope of inspection: The department inspector shall limit inspection of the vessel to those areas reasonably necessary to inspect management plans, logs, or other ballast water and sediment-related records required by these rules and maintained on board the vessel, and to areas in which ballast water or sediment is contained, pumped, or treated. Inspectors may examine records related to ballast water management plans, logs, or other ballast water and sediment-related records and make copies of such records.

(e) Identification: Department inspectors must have official identification, announce their presence and intent at the time of inspection, perform their duties in a safe and professional manner, and follow all appropriate ship safety requirements.

(f) Vessel escort: The vessel owner or operator will provide an employee to escort the department inspector to those areas of the vessel that are subject to inspection under these rules.

(g) Safety: Nothing in this section relieves the vessel owner or operator of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers.

(3) **Technical assistance.** Technical assistance is generally provided during every vessel boarding by a department ballast water inspector, but may also be the sole reason for a boarding. The purpose is to explain and provide details of state law to the officers and crew responsible for implementing the vessel's ballast water management plan. Based on the crew's familiarity with state law and ballast water management practices, the department inspector may provide a thorough overview or a brief update and be available to answer any questions they might have regarding the ballast management on board their specific vessel. The inspector will leave a state ballast water management information pamphlet with contact information on board so the vessel may contact the department directly to address any other questions that may come up regarding state requirements.

(4) **Ballast water management audit.** The department inspector may board a vessel and conduct an audit of its ballast water management documentation to verify compliance with state laws. An audit consists of reviewing the vessel's ballast water reporting form, management plan, and record book as required in this section. In addition, the inspector may request and review any other records that relate to ballast management operations, including: The Deck Log, GPS Log, Soundings Log, Stability Reports, Engine Room Log, and Oil Record Book. A vessel owner or operator who maintains a concise record of its ballast water management will expedite the audit. The department will provide a copy of a vessel audit checklist and findings to the vessel owner or operator prior to leaving the vessel.

(5) **Sampling ballast tanks.** Department inspectors may take samples from a vessel's ballast tanks in addition to the audit. These samples are used to help evaluate the risk that vessel poses for introducing nonindigenous species into waters of the state. Sampling may require the vessel's crew to provide safe access to ballast tanks for sampling, including lighting and ventilation of cargo holds, spaces, and voids as needed. The vessel's crew will provide the labor to open ballast tank manhole covers and present the tank for sample access. This may involve taking the head off of the tank level as necessary, to preclude overflowing the tank. If tank certification is necessary for access, the vessel owner or operator will be responsible for any costs incurred. At least one member of the vessel's crew will accompany the department ballast inspector at all times during the sampling process. A department inspector may also require a sample of tank sediment, where safe and practical, that can be collected by the vessel owner or operator under department observation or by the department inspector.

(6) **Exchange alternative and discharge standard performance inspections and testing.** The department may review operations data and take ballast water or sediment samples from a vessel's equipment that is used to meet exchange alternative requirements under WAC 220-650-080 or discharge performance standards under WAC 220-650-090. Vessel owners or operators must provide in-line discharge sampling ports that allow for this testing.

(7) **Investigation of violations.** Where there is evidence that a violation has occurred, the department may investigate those suspected violations. In doing so, the department may use all appropriate and practical measures of detection and environmental monitoring. Where the department determines that a violation has occurred, the department will follow the protocols under WAC 220-650-120.

(8) **Petition for civil enforcement.** If a department inspector is denied access to any vessel where access was sought for the purposes of this subsection, the department may file a petition for civil enforcement pursuant to RCW 77.120.070(3) and 34.05.578.

220-650-050. Vessels carrying high risk ballast water.

(1) **In general.** The department will identify, publish, and maintain a list of vessels that pose an elevated risk of discharging ballast water or sediment containing nonindigenous species into the waters of the state. Vessels on this list will be prioritized for evaluation and boarding under WAC 220-650-040 and may require completion of an approved temporary compliance plan and/or temporary alternative strategy under WAC 220-650-060.

(2) **Listing.** The department will identify vessels that are carrying high risk ballast water using factors including, but not limited to:

- (a) A nonindigenous species profile of originating waters;
- (b) The volume and frequency of exchanged ballast water normally discharged;
- (c) Design limitations in vessels that prevent effective exchanges;

(d) Frequency of voyages within coastal areas where exchange outside fifty nautical miles is not a viable option;

(e) Frequency and severity of vessel or vessel owner or operator violation history; and

(f) Frequency of vessel claims for safety exemptions.

(3) **Delisting.** The department will delist a vessel on the high risk list where the vessel owner or operator:

(a) Demonstrates that its management operations meet or exceed interim open sea exchange requirements under WAC 220-650-070 or 220-650-080, unless WAC 220-650-090 applies; or

(b) Demonstrates that its management operations meet or exceed the discharge performance standards under WAC 220-650-090; or

(c) Completes an approved compliance plan and/or alternative strategy per WAC 220-650-060.

220-650-060. Temporary compliance plans and alternative strategies.

(1) **In general.** The department may require a vessel owner or operator to submit a temporary compliance plan or a temporary alternative strategy to bring its vessel into compliance with state ballast water management law. Temporary compliance plans and alternative strategies are only utilized when it is not feasible to otherwise comply with regulatory requirements, and then, only for the minimum time necessary to bring a vessel into compliance. If the department approves, at its sole discretion, a compliance plan or alternative strategy, the department will issue a formal waiver exempting the vessel owner or operator from specified provisions in these rules for a specified period of time, not to exceed two years from the approval date of the waiver, to allow the vessel owner or operator to implement corrective action to bring the vessel into full compliance with the statute and rules. Forms and guidance may be adopted by department policy to assist in the implementation of this subsection.

(2) **Compliance plan.** A temporary compliance plan describes how the vessel owner or operator plans to correct vessel equipment problems causing ballast water or sediment discharges that are not in compliance with state law. These temporary compliance plans are generally related to vessels that claim safety exemptions for design limitations or equipment failure, and vessels that are listed as carrying high risk ballast water and require accelerated implementation of WAC 220-650-090 to meet the state discharge performance standard. At a minimum, a temporary compliance plan will document the responsible vessel representative, objectives and expectations, scope of work to be performed, tasks to be completed by timeline, any deliverables, interim ballast water and sediment management plan, reporting requirements, and the total time period for which a waiver is requested, up to two years. Additional information may be required by the department on a case-by-case basis. An extension of the plan beyond two years may be granted by the department in its sole discretion.

(3) **Alternative strategy.** A temporary alternative strategy describes how the vessel owner or operator plans to conduct ballast management operations to sufficiently reduce the risk of introducing nonindigenous species into waters of the state to a level determined acceptable by the department. These temporary alternative strategies are generally related to vessels that cannot otherwise meet the full regulatory requirements due to extenuating circumstances. At a minimum, a temporary alternative strategy will document the responsible vessel owner or operator, objectives and expectations, scope of actions to be performed, tasks to be completed by timeline, any deliverables or reporting requirements, and the total time period for which a waiver is requested, not to exceed two years. Additional information may be required by the department on a case-by-case basis. An extension of the strategy beyond two years may be granted by the department, in its sole discretion.

(4) **Submission.** To seek a waiver of specified rules, a vessel owner or operator shall submit to the department a completed and signed temporary compliance plan or temporary alternative strategy at their convenience if not required by the department, or within sixty days of department notice under either WAC 220-650-030 or 220-650-050, to avoid being in violation of these rules. Additional time may be allowed on a case-by-case basis. The department will notify the ballast water work group when a submission has been received and provide a copy if requested.

(5) **Review and approval.** The department will review a vessel's proposed temporary compliance plan or alternative strategy within sixty days of receipt, for completeness and suitability in accomplishing objectives. The department will then make one of the following determinations:

(a) Approval - the compliance plan or alternative strategy is acceptable for the period of time noted in the document. The department will then return the approved plan or strategy to the vessel owner or operator, attached to a waiver signed by the department;

(b) Incomplete - the document will be returned to the vessel owner or operator for revision or additional information under the original sixty-day review timeline unless otherwise extended; or

(c) Deny approval - the department determines, in its sole discretion, that the document is not suitable for meeting its regulatory objectives. The department may also deny the request if the parties do not come to agreement on an acceptable plan or strategy within sixty days of receipt of the plan by the department, unless such time frame is extended by the department in its sole discretion.

(6) **Availability.** Vessel owners or operators shall make a copy of the signed temporary compliance plan or alternative strategy document readily available for examination by the department as part of the vessel's ballast water management plan per WAC 220-650-030(5). The department will make all approved compliance plans and alternative strategies available on the department's web site or electronically, as requested.

(7) **Revocation of approval.** The department may revoke the waiver if the vessel owner or operator is not meeting the terms of the temporary compliance plan or alternative strategy. The department may agree to revise the temporary compliance plan or alternative strategy if appropriate, reasonable, and practical. In the event the department issues a notice of revocation, the vessel owner or operator will cease discharging ballast water into waters of the state unless it can meet the applicable regulations. The vessel owner or operator may appeal the decision to revoke the waiver. The appeal must be made to the director within twenty days of notice, by electronic or hard copy written form, according to the procedures set forth in chapter 34.05 RCW, Part IV, and chapter 10-08 WAC.

220-650-070. Interim open sea exchange requirements.

(1) **Purpose.** Until otherwise required to meet performance standards under WAC 220-650-090 and prior to discharging ballast water into Washington waters, vessel owners or operators must exchange their ballast water to meet or exceed state interim open sea exchange requirements or use an approved exchange alternative. An open sea exchange is intended to reduce the number of higher risk coastal organisms in a ballast tank by replacing them with open sea organisms that are less likely to invade waters of the state, and by changing the salinity and other ambient water conditions to further reduce populations of remaining coastal species. Vessel owners or operators who do not discharge ballast water into waters of the state are exempt from this section but must continue to meet the reporting and other requirements under WAC 220-650-030.

(2) **Open sea exchange methodology.**

(a) In general. An open sea exchange must result in an efficiency of at least ninety-five percent volumetric exchange of the total ballast water capacity for each tank. An open sea exchange requires using either an empty/refill method or a flow through method.

(b) Empty/refill exchange. Preferred - this type of exchange requires, for each ballast tank that contains ballast water to be discharged into waters of the state, at least one empty/refill cycle in an open sea exchange area designated by the department under subsection (3) of this section. Vessel owners or operators should remove as close to one hundred percent, but not less than ninety-five percent, of the ballast water as is safe to do so. If this is not possible, then perform a flow through exchange under (c) of this subsection.

(c) Flow through exchange. This type of exchange requires, for each ballast tank that contains ballast water to be discharged into waters of the state, pumping or otherwise forcing a minimum of three times the total ballast tank capacity's volume in an open sea exchange area designated by the department under subsection (3) of this section. For example, a ballast tank with a one thousand cubic meter capacity, regardless of actual ballast water in the tank, would require pumping three thousand cubic meters of open sea water through the tank. In all flow through exchange operations, open sea water must be pumped into the bottom and discharged out the top of the tank. Where department evaluation determines more flow through volume is required to meet the ninety-five percent exchange requirements, a compliance plan or alternative strategy may be required under WAC 220-650-060.

(3) Open sea exchange areas.

(a) In general. Ballast water exchanges must be conducted in open sea (also called midocean or mid-ocean) areas based upon originating port as defined herein. In all exchange situations, the vessel owner or operator must file a ballast water reporting form per WAC 220-650-030(2).

(b) Voyages from outside the United States Exclusive Economic Zone (EEZ). A vessel owner or operator en route to a state of Washington port or place, from a port or place outside the United States EEZ, shall conduct an open sea exchange:

- (i) Before entering waters of the state;
- (ii) At least two hundred nautical miles from any shore; and
- (iii) In waters greater than two thousand meters deep.

(c) Coastal voyages. A vessel owner or operator who does not voyage two hundred nautical miles or greater from any shore shall conduct ballast water exchange:

- (i) Before entering waters of the state;
- (ii) At least fifty nautical miles from any shore; and
- (iii) In water at least two hundred meters deep.

(4) Common water exemption. Vessels voyaging from a port within the common water zone to a port in Washington state are exempt from having to conduct a ballast water exchange if the ballast water and sediment originated solely from a valid exchange prior to entering the common waters or from uptake within an area that includes only the waters of Washington state, the Oregon portions of the Columbia River system, and the internal waters of British Columbia south of latitude fifty degrees north, including the waters of the Straits of Georgia and Juan de Fuca (Figure 1 [omitted]). The common waters area relates only to vessels voyaging to a Washington state port or place from another Washington state port or place, or from designated Canadian and Oregon waters to waters of the state. It does not imply or provide any regulatory authority for vessels voyaging from waters of the state to Oregon and Canadian waters, or voyages to or between Canada and Oregon. Please refer to Canadian and Oregon ballast water laws for their requirements.

(5) Safety exemptions. Nothing in this chapter relieves the vessel owner or operator from ensuring the safety and stability of the vessel, its crew, or its passengers. A vessel owner or operator is not required to conduct an open sea exchange, in part or in full, if the vessel owner or operator determines that the operation would threaten the safety of the vessel, its crew, or its passengers. In these situations, the vessel operator must file a ballast water reporting form and is subject to all other provisions under WAC 220-650-030(4).

(6) Alternative discharge areas. The department, in consultation with states of concurrent waters, may identify alternative discharge areas as promulgated by department policy.

(7) Prohibited discharge areas. A vessel may not discharge ballast water or sediment within a marine protected or conservation area as designated under chapter 220-16 WAC.

220-650-080. Interim open sea exchange alternative.

(1) **In general.** For purposes of this section, a vessel owner or operator may use an exchange alternative instead of conducting an open sea exchange, except for Columbia River ports unless specifically approved, provided:

(a) The vessel owner or operator is not otherwise required to meet discharge performance standards under WAC 220-650-090; and

(b) The exchange alternative meets or exceeds the standards provided under Regulation D-2 of the International Convention for the Control and Management of Ships' Ballast Water and Sediment as signed on February 13, 2004.

(2) **Notification.** Vessel owners or operators must file a signed notification form, as provided by the department, stating that they intend to use an exchange alternative to meet state ballast water exchange requirements. A single notification form may cover multiple vessels under the authority of a single vessel owner or operator. The form must include the minimum content as required in subsection (3) of this section. This notification does not release vessel owners or operators from meeting other federal or state ballast water reporting or discharge regulations.

(3) **Notification form contents.** The department's notification of exchange alternative use will, at a minimum, require the following information:

(a) Vessel name(s), identification number(s) (International Maritime Organization, Lloyds of London, or USCG registry number), owner, agent, and vessel type(s);

(b) The manufacturer, brand name, model, and other information, as necessary, of the technology on board the vessel, and a brief description of the technology and its process for removing or inactivating organisms in ballast water;

(c) The name of the flag state that has approved the exchange alternative system, a copy of IMO type approval certification or final approval documentation, or other information that reasonably documents how the exchange alternative was tested to ensure it meets state open sea exchange requirements;

(d) If the exchange alternative will not be used on all ballast tanks, the number of tanks and the volume of each tank that will be managed using the exchange alternative;

(e) A recommendation from the state department of ecology, based upon a toxicity report provided in accordance with Appendix H of ecology publication number WQ-R-95-80, setting conditions necessary for the environmentally safe discharge of biocide treated ballast water;

(f) A statement that the vessel owner or operator will file a new notification if there are any changes in the information required in this subsection;

(g) A statement that the vessel will conduct a valid open sea exchange under this section if they do not use the exchange alternative; and

(h) The signature of the vessel owner or operator.

(4) **Submission.** The department will accept notification application forms up to eighteen months prior to the implementation date for that type of vessel under WAC 220-650-090, or a subsequent, delayed implementation date. Applications received within the eighteen-month period may be accepted, but will not be granted the full grace period as provided in subsection (6)(c) of this section. Send the completed form to the department by email to ballastwater@dfw.wa.gov, or if email is not possible, by fax to 360-902-2943, or by U.S. mail to: WDFW, AIS Unit, P.O. Box 43200, Olympia, Washington 98504-3200, USA. The vessel owner or operator will be notified of the department's receipt of the form within ten working days.

(5) **Acceptance.** The department will make a final decision on acceptance within forty-five days of receipt. If the notification is illegible or incomplete, it will be returned to the vessel owner or operator as unacceptable, with an explanation of the deficiencies. The notification is effective upon department verification of acceptance by email or in writing to the vessel owner or operator.

(6) **Notification conditions.** To maintain acceptance, the vessel owner or operator must meet all of the following conditions:

(a) All notification form content in subsection (3) of this section remains accurate;

(b) Vessel owners or operators shall maintain a copy of the accepted notification of exchange alternative use in the vessel's ballast water management plan under WAC 220-650-030;

(c) Vessel owners or operators may use the exchange alternative for a period of five years from the date on which the equipment was first placed into service or until the vessel must meet discharge performance standards under WAC 220-650-090, whichever is longer;

(d) The exchange alternative equipment is otherwise used as defined in WAC 220-650-090 for installed equipment; and

(e) The department determines through inspections, sampling, investigations, or other methods, that the exchange alternative continues to meet, or is likely to continue to meet, open sea exchange standards.

(7) **Other laws.** Nothing in these rules or laws authorizes the discharge of other pollutants or assures that the technology is safe to operate or that it meets other state, federal, and international laws governing business, marine applications, or other elements.

220-650-090. Treatment requirements.

Reserved.

220-650-100. Treatment notification and promising treatment waiver process.

(1) **Purpose.** This section implements RCW 77.120.040 (5)(a). All vessels using treatment technologies designed to meet state ballast water discharge performance standards are required to notify the department prior to or within thirty days of their first use in waters of the state. A prior notification is preferred to assess compliance with state regulations in using treatment technology to meet discharge performance standards and to assist vessel owners or operators in avoiding the discharge of ballast water that does not meet those standards or that poses other potential violations. It is the responsibility of the vessel owner or operator to show that the installed equipment meets state discharge performance standards. Vessel owners or operators wishing to use treatment technology that does not meet state standards may apply for a waiver to use the technology as promising technology under subsection (3) of this section.

(2) **Notification.** Vessel owners or operators using treatment technology must file a signed notification form, as provided by the department, stating that their vessel meets state discharge performance standards under WAC 220-650-090. A single notification form may cover multiple vessels under the authority of a single vessel owner or operator. The form must include the minimum content as required in subsection (4) of this section.

(3) Waiver for promising treatment technology use.

(a) In general. Vessel owners or operators using promising treatment technology do not need to file a notification, but they must apply for a waiver to the interim open sea exchange requirements under WAC 220-650-070.

(b) Criteria. The form must include the minimum content as required in subsection (4) of this section and be received by the department at least forty-five days prior to entering waters of the state. In addition, promising technology must meet one or more of the following criteria:

- (i) The same manufacturer's treatment technology is being tested on a vessel that is enrolled in the USCG Shipboard Technology Evaluation Program (STEP), United States Environmental Protection Agency Environmental Technology Verification (ETV) program, or other department-recognized regional or national program;
- (ii) The technology is approved as promising technology or a similar classification by the state of California, Oregon, Hawaii, or Alaska for use in their state waters; or
- (iii) The technology is being actively evaluated under the IMO final approval process.

(4) Notification and waiver application form content.

(a) In general. Standard notification application and promising technology waiver forms are provided by the department and must be used for this subsection. A single waiver form may cover multiple vessels under the authority of a single vessel owner or operator.

(b) Content. The department's notification of treatment technology use and application for promising treatment technology waiver forms will, at a minimum, require the following information:

- (i) Vessel name(s), identification number(s) (International Maritime Organization, Lloyds of London, or USCG registry number), owner, agent, and vessel type(s);
- (ii) The manufacturer and brand name of the technology on board the vessel and a brief description of the technology and process for removing or inactivating organisms in ballast water;
- (iii) The name of the organization or flag state that has approved the ballast water treatment technology, and the approval or certification number of the technology or other information that reasonably documents how the technology was tested to ensure it meets, or is likely to meet in the case of promising treatment technology, state discharge performance standards for the vessel type on which it is being used;
- (iv) If the treatment technology will not be used on all ballast tanks, the number of tanks and the volume of each tank that will be managed using the treatment technology;
- (v) A recommendation from the state department of ecology, based upon a toxicity report provided in accordance with Appendix H of ecology publication number WQ-R-95-80, setting conditions necessary for the environmentally safe discharge of biocide-treated ballast water;
- (vi) A statement that the vessel owner or operator will file a new notification if there are any changes in the information required in this subsection;
- (vii) A statement that the vessel will conduct a valid ballast water exchange, under WAC 220-650-070, if it does not use the treatment technology; and
- (viii) The signature of the vessel owner or operator.

(5) **Submission.** The department will accept notification and waiver application forms at any time. Send the completed form to the department by email to ballastwater@dfw.wa.gov, or if email is not possible, by fax to 360-902-2943, or by U.S. mail to: WDFW, AIS Unit, P.O. Box 43200, Olympia, Washington 98504-3200, USA. The vessel owner or operator will be notified of the department's receipt of the form within ten working days.

(6) Acceptance.

(a) Notification. The department will make a final decision on acceptance of a notification application form within forty-five days of receipt. If the notification is illegible or incomplete, it will be returned to the vessel owner or operator as unacceptable, with an explanation of the deficiencies. The notification is effective upon department verification of acceptance by email or in writing to the vessel owner or operator.

(b) Waiver for promising treatment technology use. The department will make a final decision on acceptance for a waiver within forty-five days of receipt. If the application is illegible or incomplete, it will be returned to the vessel owner or operator as incomplete, with an explanation of the deficiencies. The waiver is effective upon department verification of acceptance by email or in writing to the vessel owner or operator.

(7) Notification and waiver acceptance conditions.

(a) In general. To maintain acceptance, the vessel owner or operator must meet a minimum set of conditions.

(b) Conditions. Minimum conditions include:

- (i) All acceptance form content in subsection (4) of this section remains accurate;
- (ii) Vessel owners or operators shall maintain a copy of the accepted notification of treatment technology use or waiver form for promising treatment technology use in the vessel's ballast water management plan under WAC 220-650-030(5);
- (iii) The technology is used as defined in subsection (8) of this section for installed treatment technology; and
- (iv) The department determines through inspections, sampling, investigations, or other methods that the technology continues to meet, or is likely to continue to meet, ballast water discharge performance standards under WAC 220-650-090.

(8) Installed treatment technology.

(a) In general. If ballast water treatment technology used for purposes of complying with the regulations under this subsection is installed on a vessel, maintained in good working order and used by the vessel, the vessel may use that technology for the shortest of:

- (i) Federal requirements;
- (ii) The life of the vessel on which the technology is used; or
- (iii) The manufacturer's equipment life specifications.

(b) Incremental improvements. Vessel owners and operators are encouraged to incrementally improve installed treatment technology to meet higher discharge performance standards and reduce the risk of introducing nonindigenous species. The expectation is these improvements would take advantage of regular maintenance and upgrade schedules.

(c) Record or log book. All information regarding compliance with this subsection must be recorded in the vessel's ballast water record or log book per WAC 220-650-030(6).

(9) **Other laws.** Nothing in these rules or laws authorizes the discharge of other pollutants or assures that the technology is safe to operate or that it meets other state, federal, and international laws governing business, marine applications, or other elements.

220-650-110. Ballast tank sediment.

(1) **Purpose.** A vessel owner or operator may not remove or discharge sediment or tank fouling organisms into waters of the state from spaces carrying ballast water unless that sediment or those organisms are discharged solely in the location from which they originated. Sediment is known to contain nonindigenous species that are otherwise missed during open sea exchange and operations that would otherwise meet ballast water discharge performance standards. These rules implement RCW 77.120.020 (1)(b) and the overall authority under RCW 77.120.030(3) and 77.120.040(5) to set standards by rule that provide a minimal risk of introducing nonindigenous species into the waters of the state.

(2) Ballast tank sediment removal options.

(a) In general. Three options are provided for the effective removal of sediment and any fouling organisms in a vessel's ballast tanks, including saltwater flushing, upland disposal, or use of an approved reception facility.

(b) Saltwater flushing. Ballast tanks must be cleaned as necessary in open sea exchange areas consistent with WAC 220-650-070(3) voyage requirements unless common water rules apply under WAC 220-650-070(4) except for ballast-related fouling organisms. Sediment may be removed by saltwater flushing of ballast water tanks by:

- (i) Adding open sea water to a ballast water tank that contains residual quantities of ballast waters;
- (ii) Mixing the open sea water with the residual ballast water and sediment in the tank through the motion of a vessel or alternative means so that the sediment becomes suspended; and
- (iii) Discharging the mixed water so that the salinity of the resulting residual ballast water in the tank exceeds thirty parts per thousand.

(c) Upland disposal. Tank sediment and fouling organisms may be removed from the vessel under controlled arrangements in port or in drydock, and disposed of in accordance with local, state, and federal law.

(d) Sediment reception facilities. The department, in consultation with the department of ecology, will adopt department policies as necessary for sediment reception facilities. These facilities must be approved by the department for use and provide for the disposal of such sediment in a way that effectively eliminates the risk of nonindigenous species and does not impair or damage the environment, human health, property, or resources of the disposal area.

(3) Reporting. Sediment cleaning and discharges must be recorded in the vessel's ballast water log or record book as defined in WAC 220-650-030(6), or in another format conforming to the intent of that section.

220-650-120. Penalties and enforcement.

(1) **Purpose.** The department may issue a verbal warning, notice of correction, or notice of civil penalty up to twenty-seven thousand five hundred dollars for each day of a continuing violation of the requirements of ballast water management regulations pursuant to RCW 77.120.070. Each and every such violation will be a separate and distinct violation. The department may also seek criminal penalties where warranted.

(2) Notice of correction.

(a) In general. If, in the course of carrying out their duties under chapter 77.120 RCW or this chapter, a department employee becomes aware that a vessel owner or operator is not in

compliance with applicable laws and rules enforced by the department, the department may issue a notice of correction as provided in RCW 43.05.100 to the vessel owner or operator.

(b) Content. A notice of correction, at a minimum, will include:

- (i) A description of the condition that is not in compliance, and the text of the specific section or subsection of the applicable state law or rule;
- (ii) A statement of what is required to achieve compliance;
- (iii) The date and time by which the department requires compliance to be achieved;
- (iv) Notice of the means to contact any technical assistance services provided by the department; and
- (v) A description of when, where, and from whom to request an extension of time to achieve compliance for good cause.

(c) Context. A notice of correction is not a formal enforcement action, is not subject to appeal, and is a public record.

(d) Compliance. If the department issues a notice of correction, it shall not issue a civil penalty for the violations identified in the notice of correction unless the responsible party fails to comply with the notice.

(3) Notice of penalty.

(a) In general. If, in the course of carrying out their duties under chapter 77.120 RCW or this chapter, a department employee becomes aware that a vessel owner or operator is not in compliance with applicable laws and rules enforced by the department, the department may issue a notice of penalty as provided in RCW 43.05.110 to the vessel owner or operator.

(b) Conditions. The department may issue a notice of penalty without first issuing a notice of correction under subsection (2) of this section to the vessel owner or operator where:

- (i) The vessel owner or operator has previously been subject to an enforcement action for the same or a similar type of violation of the same statute or rule or has previously been given a notice of correction for the same or similar type of violation of the same statute or rule;
- (ii) Compliance is not achieved by the date established in a previously issued notice of correction, whereupon every day's continuance thereafter will be a separate and distinct violation;
- (iii) The violation has a probability of, or actually resulted in, the discharge of ballast water and/or sediments that do not meet the requirements set forth in WAC 220-650-070, 220-650-080, 220-650-090, or 220-650-110; or
- (iv) The violation was committed by a business that employs fifty or more employees on at least one day in each of the preceding twelve months.

(c) Context. A notice of penalty is a formal enforcement action, is subject to appeal, and is a public record.

(d) Compliance. If the department issues a notice of penalty, it shall calculate a civil penalty for the violation(s) as provided in subsection (4) of this section.

(4) Calculation and payment of civil penalties.

(a) In general. The department will assess civil penalties for each separate and distinct violation for each day of a continuing violation of the requirements of ballast water management regulations.

(b) Base penalty. There are three base civil penalties:

- (i) Two thousand dollars for violations that are not related to or do not result in the discharge of ballast water that does not meet open sea exchange or discharge performance standards;
- (ii) Five thousand dollars for failing to comply with a notice of correction issued under subsection (2) of this section; and
- (iii) Five thousand dollars for violations that result in a discharge of ballast water that does not meet open sea exchange or discharge performance standards.

(c) Level of intent. Evidence of intent to violate the laws and rules governing ballast water and sediment management may result in an increase in the base penalty up to twenty-seven thousand five hundred dollars for each separate and distinct violation for each day of a continuing violation. Evidence includes, but is not limited to:

- (i) Intention. In making a determination of intent, the department will consider, but not be limited to, the following considerations: The vessel owner or operator knowingly violated state laws and rules; whether precautions were taken to avoid the violation; and/or whether an inspection, warning, notice of correction, or enforcement action was served on the violator prior to the violation. For this factor, up to double the base penalty may be added.
- (ii) Cooperation. The department will consider whether the violator did or did not make any attempt to correct the problem. Timeliness of action(s) and/or ignoring or evading agency contacts or directives will determine whether the penalty will be increased. For this factor, up to double the base penalty may be added.
- (iii) Previous violation(s). The department will consider whether the violator has previous violations of a ballast water rule or regulation as documented in an enforcement action. The department may consider company organizations and assignment of operational responsibilities when evaluating previous violations. A substantially larger penalty will result if the violator has a history of violations with adverse impacts or the potential for adverse impacts or that shows a pattern of ignoring the rules or the act. Enforcement actions for the purposes of this section will include notices of penalty, the amounts of those civil penalties, and criminal citations when those enforcement actions are associated with ballast water violations. For this factor, up to quadruple the base penalty may be added.

(d) Quality and quantity of risk. Evidence showing the potential or actual discharge of high risk ballast water or sediment may result in an increase in the base penalty up to twenty-

seven thousand five hundred dollars for each separate and distinct violation for each day of a continuing violation. Evidence includes, but is not limited to:

(i) Vessels carrying high risk ballast water and/or sediment listed under in WAC 220-650-050. For this factor, up to double the base penalty may be added.

(ii) Volume of ballast water and sediment discharged or potentially discharged. For this factor, up to quadruple the base penalty may be added.

(e) Payment. Unless a timely appeal is filed, all civil penalties imposed must be paid to the department within thirty days after the date of the written notice imposing the civil penalty. If a timely appeal is filed, then all civil penalties imposed must be paid upon the completion of all administrative and judicial review proceedings and the issuance of a final notice affirming the penalty in whole or in part.

(f) Failure to pay. Any determination not timely contested is final and may be reduced to a judgment enforceable in any court with jurisdiction. Where the department prevails, using any judicial process to collect a penalty under this section, the department shall also be awarded its costs and reasonable attorneys' fees.

(5) Appeals.

(a) In general. A person who is subject to a notice of penalty shall have the rights provided by this section to request an adjudicative proceeding to contest the notice. No person other than the recipient of the notice or the recipient's legal representative shall have standing to request an adjudicative proceeding. The adjudicative proceeding shall be in compliance with provisions of chapter 34.05 RCW, the Administrative Procedure Act, except as modified herein by the department.

(b) Timing for request. An adjudicative proceeding to contest a notice of penalty must be requested no later than twenty days from the date of service of the notice. To be timely, the request must be physically received by the department director in Olympia, Washington, during normal business hours on or before the twentieth day following the date of service of the order, except that if the twentieth day falls on a Saturday, Sunday, or state holiday, then the request for hearing shall be timely if received on the next business day. The person requesting an adjudicative proceeding may prove that it was timely requested by obtaining a written receipt of service from the department director, or by providing an affidavit showing personal service on the department director, or by a U.S. mail return receipt requested service showing receipt by the department on or before the last day set by this rule.

(c) Manner and content of request. Each request for adjudicative proceeding shall substantially comply with this subsection.

(i) The request shall be in writing;

(ii) The request shall identify the notice of penalty that the person seeks to contest. This can be done by reference to the number of the notice, by reference to the subject and date of the notice, or by reference to a copy of the notice attached to the request;

- (iii) The request shall state the grounds upon which the person contests the notice of penalty. If the person contests the factual basis for the notice, the person shall allege the facts that the person contends are relevant to the appeal; and
- (iv) The request shall identify the relief that the person seeks from the adjudicative proceeding by specifying whether the person asks to have the notice vacated, or provisions of the notice corrected.

(6) Coordination with United States Coast Guard (USCG). The department will report state violations, penalties and enforcement actions taken on vessels, as requested by cooperative agreement, to the appropriate sector representative of the USCG. The department will also report suspected federal violations to the USCG.

(7) Other laws. These regulations are in addition to any other state or federal laws related to ballast water management.