5. BALLAST WATER MANAGEMENT – RULE BRIEFING & PUBLIC HEARING

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"GREEN SHEET"

Meeting dates:	May 8-9, 2009
Agenda item: #5	Ballast Water Management - Rule Briefing & Public Hearing
Staff Contact:	Allen Pleus, Aquatic Invasive Species Coordinator, Fish Program
Presenter(s):	Allen Pleus, Aquatic Invasive Species Coordinator, Fish Program [Possible members of Ballast Water Work Group (BWWG)]

Background:

Ballast water is considered one of the greatest pathways for the introduction and spread of aquatic invasive species worldwide. The state averages nearly 4,000 vessel visits per year at over 20 ocean access ports along 3,026 miles of marine shoreline. These vessels discharge approximately 9.5 million cubic meters of ballast water annually into state waters from ports around the world. To help put this into context, this volume of ballast water would fill 65,775 railroad container cars and create a single train 750 miles long that stretched from Sacramento, California to Seattle, Washington.

The WDFW Fish Program's Aquatic Invasive Species (AIS) Unit has been implementing the ballast water management project since the first legislation passed in 2000. Washington and California were the nation's first states to have ballast water management programs to provide a significantly greater level of protection than available through the federal government. Oregon recently hired its first ballast water management staff and we are all striving for consistency between our states. The need for state management continues as federal law still does not require ballast water management for coastal voyages and federal resources rarely allow all but cursory inspection of vessels for compliance. Many federal efforts continue to be made for a national management system, but they are still far from being adopted or adequately protective of state waters. To be successful, any future federal management system must support a strong federal/ state partnership.

Washington state management has always been accomplished in close consultation with the Ballast Water Work Group (BWWG), which was instrumental in having the first legislation passed. The BWWG was then formally established by legislative direction between 2002 and 2007. The result of that partnership was a set of recommendations to the 2007 legislature for changes to RCW 77.120, which were passed by unanimous support.

Although the BWWG mandate had sunsetted, the department did not want to lose the valuable experience and relationships developed during the previous seven years and re-established the group by charter under the department in 2007. The group is composed of representatives from the regulated industry, ports, state and federal agencies including the US Coast Guard, tribes, environmental groups, academia, and other interested parties. The BWWG has since met nearly monthly over the past two years to develop the set of proposed rules.

The result is a carefully crafted set of permanent rules designed to replace and enhance the previous permanent rules contained in WACs 220-77-090 and 220-77-095. These rules have been in place since 2001 and neither meet current RCW directives, nor are they sufficient to meet the fundamental purpose of ballast water management – protecting state waters from invasive species.

Timely adoption of permanent rules is necessary to replace emergency rules that were crafted as a bridge in August of 2007 and have been extended mutiple times since. The emergency rules provide the minimum information required to implement key changes to RCW 77.120, but

were never intended to be the final language. The rules have a new WAC chapter, 220-150, because the old chapter (220-77) was designed for aquaculture disease control and not fully representative of ballast water management.

Policy issue(s) you are bringing to the Commission for consideration:

WDFW believes that it is prudent and reasonable to provide rules that strengthen the state's ballast water management program to protect state waters from the threat of aquatic invasive species.

Once adopted, the AIS Unit will provide outreach and training of the new rules through an updated web site, a series of public meetings, and by department vessel inspectors during routine boardings.

Public involvement process used and what you learned:

The principal public involvement process has been through consultation with the department's stakeholder Ballast Water Work Group (BWWG) at monthly meetings. There are approximately 20 active members that regularly attend meetings and comment on issues. Meeting notes and information are then diseminated to over 80 persons/businesses that are on the department's e-mail distribution list. This list is open to all public interests and those on the list have received all copies of files related to ballast water rule making by the department.

Active BWWG state and federal members include the Puget Sound Partnership, Departments of Ecology and Health, US Coast Guard, Pacific States Marine Fisheries Commission, US Fish & Wildlife Service, and the Northwest Indian Fisheries Commission. Active shipping and transport participants include the Pacific Merchant Shipping Association, Transportation Institute, Western States Petroleum Association, British Petroleum, Transmarine Navigation Corporation, TESORO Petroleum, Columbia River Steamship Operators Association, Holland America Lines, Hyde Marine, Port of Seattle, and the Port of Tacoma. Active environmental and related-interest participants include Seattle Audubon, People for Puget Sound, Citizens for a Healthy Bay, University of Washington, and Glosten Associates. We also have regular participation by ballat water management peers from the states of Oregon, California, Alaska, and Hawaii.

Over the past two years, progress was made when parties learned and respected what the other party required to make a regulation workable. The rule package reflects this learning by aligning requirements and timelines to the greatest degree possible with general shipping logistics. The department's outreach also provides a learning opportunity for the public on how the department sees and implements its role in protecting, restoring and enhancing fish and wildlife habitat, and other public resources. The department has gained from the knowledge and experience of all members on the BWWG and looks forward to continuing that learning process.

Action requested:

Briefing only in coordination with the public hearing.
Rule adoption action requested for June 2009 meeting.

Draft motion language:

N/A

Justification for Commission action:

The BWWG is in consensus that the proposed rule package fairly and adequately meets legislative directives.

PROPOSED RULE MAKING

CR-102 (June 2004)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

Agency: Washington Department of Fish & Wildlife

☒ **Preproposal Statement of Inquiry was filed as WSR** 07-15-034 **; or**
☐ **Expedited Rule Making--Proposed notice was filed as WSR** _____**; or**
☐ **Proposal is exempt under RCW 34.05.310(4).**

☒ **Original Notice**
☐ **Supplemental Notice to WSR** _____
☐ **Continuance of WSR** _____

Title of rule and other identifying information: (Describe Subject) WACs 220-150-010 through 220-150-080, Ballast water management.

Hearing location(s):

Natural Resources Building
Room 172
1111Washington St., SE
Olympia, WA 98504

Date: May 8-9, 2009 Time: 8:45 am

Date of intended adoption: June 5, 2009
(Note: This is **NOT** the **effective** date)

Submit written comments to:
Name: Rules Coordinator

Address: 600 Capitol Way No., Olympia, WA 98501-1091
e-mail: Lori.preuss@dfw.wa.gov
phone: (360) 902-2930
fax: (360) 902-2155 by (date) May 1, 2009

Assistance for persons with disabilities: Contact Susan Yeager by May 1, 2009

TTY (360) 902-2207 or (360) 902-2267

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This rule-making replaces existing ballast water management rules found in WACs 220-77-090 and 220-77-095 with updated information and requirements as directed by E2SSB 5923 (2007 c 350), "Aquatic Invasive Species," which revised and added new ballast-water management statutes under Chapter 77.120 RCW. WACs 220-77-090 and 220-77-095 will be repealed.

Reasons supporting proposal: The proposed rules do not require the creation of new infrastructure or other than minimal increases in services than currently exist. The rules will help to significantly reduce environmental impacts from nonindigenous-species discharges in the ballast water of vessels of 300 gross tons or more, whether United States- or foreign-owned or -operated.

Statutory authority for adoption: RCW 77.120.030; 77.120.040; 77.120.070; 77.12.047

Statute being implemented: RCW 77.120.030; 77.120.040; 77.120.070; 77.12.047

Is rule necessary because of a:

Federal Law?	☐ Yes	☒ No
Federal Court Decision?	☐ Yes	☒ No
State Court Decision?	☐ Yes	☒ No

If yes, CITATION:

DATE
April 1, 2009

NAME (type or print)
Lori Preuss

SIGNATURE
Lori Preuss

TITLE
Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 01, 2009
TIME: 9:54 AM

WSR 09-08-125

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:
None.

Name of proponent: (person or organization) Washington Department of Fish & Wildlife

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting.....	Allen Pleus	1111 Washington Street, Olympia	(360) 902-2724
Implementation....	Lew Atkins	1111 Washington Street, Olympia	(360) 902-2651
Enforcement.....	Bruce Bjork	1111 Washington Street, Olympia	(360) 902-2373

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☒ Yes. Attach copy of small business economic impact statement. See Attachment 1.

A copy of the statement may be obtained by contacting:
Name: Lori Preuss, Rules Coordinator
Address: 600 Capitol Way North, Olympia, WA 98501-1091

Phone: (360) 902-2930
Fax: (360)902-2155
e-mail: Lori.preuss@dfw.wa.gov

☐ No. Explain why no statement was prepared.

Is a cost-benefit analysis required under RCW 34.05.328?

☐ Yes A preliminary cost-benefit analysis may be obtained by contacting:
Name:
Address:

phone ( ) _____
fax ( )_____
e-mail _____

☒ No: Please explain: These proposals do not affect hydraulics.

Chapter 220-150 WAC

BALLAST WATER MANAGEMENT

NEW SECTION

WAC 220-150-010 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 220-150-060 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.

NEW SECTION

WAC 220-150-020 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 CFR, 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 CFR, 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 CFR, 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.

NEW SECTION

WAC 220-150-030 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 220-150-040 for interim exchange, WAC 220-150-043 for interim exchange alternative, and WAC 220-150-050 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 CFR, Part 151.2041, for each port visit.

(iii) If submitting an IMO reporting form, it must be completed per USCG regulation under Title 33 CFR, 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 e-mail at ballastwater@dfw.wa.gov or, if e-mail is not possible, by fax to 360-902-2845. 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

e-mail to ballastwater@dfw.wa.gov or, if e-mail is not possible, by fax to 360-902-2845, or by U.S. mail to: WDFW, AIS Unit, 600 Capitol Way N., Olympia, Washington 98501-1090, 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 220-150-050 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 220-150-037 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 220-150-037, or within the sixty-day notice period under WAC 220-150-037. 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, is not appealable, 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.

NEW SECTION

WAC 220-150-033 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 220-150-035. 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 inspectors: Inspections shall be conducted only by department employees 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 220-150-043 or discharge performance standards under WAC 220-150-050. 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 220-150-080.

(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.

NEW SECTION

WAC 220-150-035 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 220-150-033 and may require completion of an approved temporary compliance plan and/or temporary alternative strategy under WAC 220-150-037.

(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 220-150-040 or 220-150-043, unless WAC 220-150-050 applies; or

(b) Demonstrates that its management operations meet or exceed the discharge performance standards under WAC 220-150-050; or

(c) Completes an approved compliance plan and/or alternative strategy per WAC 220-150-037.

NEW SECTION

WAC 220-150-037 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 220-150-050 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 220-150-030(4) or 220-150-035, 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 220-150-030(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.

NEW SECTION

WAC 220-150-040 Interim open sea exchange requirements. (1) **Purpose.** Until otherwise required to meet performance standards under WAC 220-150-050 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 220-150-030.

(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 220-150-037.

(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 220-150-030(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.

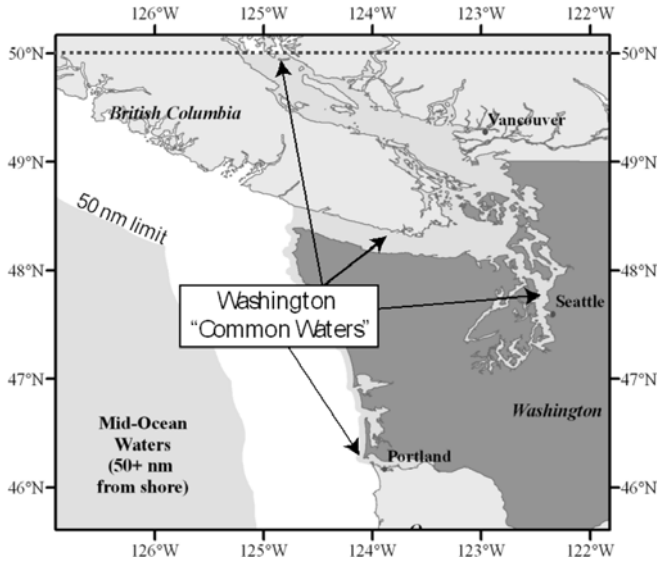
(c) Coastal voyages. A vessel owner or operator who does not voyage two hundred nautical miles or greater from any shore shall conduct ballast water exchange:

(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). 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 220-150-030(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.

NEW SECTION

WAC 220-150-043 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 220-150-050; 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 220-150-050, 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 e-mail to ballastwater@dfw.wa.gov, or if e-mail is not possible, by fax to 360-902-2845, or by U.S. mail to: WDFW, AIS Unit, 600 Capitol Way N., Olympia, Washington 98501-1090, 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 e-mail 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 220-150-030(5);

(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 220-150-050, whichever is longer;

(d) The exchange alternative equipment is otherwise used as defined in WAC 220-150-050 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.

NEW SECTION

WAC 220-150-050 Treatment requirements. Reserved.

NEW SECTION

WAC 220-150-060 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 220-150-050. 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.

(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 vessel 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 220-150-040, 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 e-mail to ballastwater@dfw.wa.gov, or if e-mail is not possible, by fax to 360-902-2845, or by U.S. mail to: WDFW, AIS Unit, 600 Capitol Way N., Olympia, Washington 98501-1090, 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 e-mail 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 e-mail 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 220-150-030(5);

(iii) The technology is used as defined in WAC 220-150-050 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 220-150-050.

(8) **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.

NEW SECTION

WAC 220-150-070 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 220-150-040(3) voyage requirements unless common water rules apply under WAC 220-150-040(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 220-150-030(6), or in another format conforming to the intent of that section.

NEW SECTION

WAC 220-150-080 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 220-150-040, 220-150-043, 220-150-050, or 220-150-070; 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 220-150-035. 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.

Small Business Economic Impact Statement

Finding: One (1) Small Business. A survey of 21 Washington State businesses with vessels regulated under these rules found on only one small business: B & N Fisheries (Appendix 1). Identification of these businesses was based on ownership of vessels that have filed ballast water reporting forms with the department since 2004 and best efforts to only list those that are currently owned and operated independently from all other businesses. B & N Fisheries reported owning seven commercial fishing vessels that meet the minimum 300 gross tons requirement and that they all work out of Dutch Harbor, Alaska. Of the seven vessels, only four have made Washington port visits (three only once; one only twice) and discharged only minimal amounts of ballast water (Appendix 2).

Minimum 300 gross ton criterion eliminates most small businesses. The minimum vessel size criterion established by the department in 2000, and similar to California regulations, indirectly appears to have nearly eliminated the impact of these regulations on Washington State small businesses that own vessels capable of discharging ballast water.

No regulatory differences for Small Businesses. Small businesses with vessels over 300 gross tons must comply with the same regulations as those required by businesses with greater than 50 employees.

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1. Description of the business reporting, record keeping, and other compliance requirements of the proposed rule.

The proposed rules substantively change the rule format from the previous WACs, 220-77-090 and 220-77-095. Many of the previous requirements have been modified to improve clarity of intent and process for compliance. Rule requirements are therefore divided into two groups: a) those that carry over from previous rules and do not substantively increase workload; and b) new requirements necessary to meet statute directives. A rough estimate, by percentage of vessel arrivals (based on an average of 4,000 per year), is provided at the end of each bullet to show potentially affected vessels.

a) <u>Existing or Carry-over requirements:</u>

- **WAC 220-150-030: Reporting forms, waivers, safety exemptions, and recordkeeping.**
  - Subsections (2) and (3) - Ballast water reporting form and request for reporting form waiver are consistent with previous rule requirements. (100%)
  - Subsection (5) – Ballast water management plan is a one-time state requirement, but is already necessary by US Coast Guard law. Replaces previous “Interim report for implementing 2007 ballast water exchange program” requirement. (100%)
- **WAC 220-150-033 Vessel inspections.**

- Vessel inspections by department clarifies requirements consistent with previous rule requirements. (5-10%)

- **WAC 220-150-040: Interim open sea exchange requirements**
  - Subsection (2) – Open sea exchange methodology is consistent with previous requirements for empty/refill and flow-through procedures. (100%)
  - Subsection (3) – Open sea exchange areas are consistent with previous requirements (except (d) – see below). (100%)
  - Subsection (4) – Common water exemption is consistent with previous requirements. (100%)
  - Subsection (5) – Safety exemptions is consistent with previous requirements. (< 0.1%)
- **WAC 220-150-060: Treatment notification and promising treatment waiver process**
  - Subsection (2) – Notification modifies existing one-time reporting requirement for vessels using treatment technologies. (100%)
  - Subsection (3) – Waiver for promising-treatment technology use revises existing types of vessels that may apply and reduces many previous reporting and compliance requirements. (< 1%)
  - Subsections (4) – (7) Notification and waiver application form content, submission, acceptance, and conditions modify existing requirements. (100%)
- **WAC 220-150-070: Ballast tank sediment**
  - Subsection (1) – Purpose clarifies requirements not to discharge ballast tank sediment or fouling organisms consistent with statute authority. (100%)
- **WAC 220-150-080: Penalties and enforcement**
  - Subsection (1) – (5) clarifies existing requirements for compliance with notices of correction and notice of penalty consistent with statute authority. (100%)

b) **<u>New requirements:</u>**

- **WAC 220-150-030: Reporting forms, waivers, safety exemptions, and recordkeeping**
  - Subsection (4) – Vessels claiming safety exemptions provides: (b) minor documentation requirements on established ballast water reporting form; (c) department review process to determine need for a compliance plan or alternative strategy; (d) a discharge authorization requirement; and (e) a safety exemption filing fee of $500. (< 0.1%)
  - Subsection (6) – Ballast water log or record book is state requirement, but is already in common practice and rules allow alternative means of recordkeeping to minimize any additional requirements. (100%)
- **WAC 220-150-035 Vessels carrying high risk ballast water.**
  - Subsection (3) - Provides delisting options for specified high risk vessels placed on list by the department. (< 10%)
- **WAC 220-150-037 Temporary compliance plans and alternative strategies.**
  - Temporary compliance plans and alternative strategies provide requirements for specific vessels as identified in Subsections (7) or (8). (< 2%)

- **WAC 220-150-040: Interim open sea exchange requirements**
  - Subsection (3) – (d) "Pacific coast region" definition requires only vessels originating from coastal areas outside this region to go out 200 miles to exchange; consistent with California. (< 1%)
  - Subsection (6) – Alternative discharge areas may be required in limited situations, but likely to benefit vessel operators from not having to go out 50 miles to conduct an open sea exchange. (< 1%)
  - Subsection (7) – Prohibited discharge areas is requirement to protect sensitive areas, but highly unlikely location for vessels to currently discharge ballast water. (< 1%)
- **WAC 220-150-043 Interim open sea exchange alternative.**
  - Provides option to encourage use of treatment systems instead of conducting exchange. (< 10%)
- **WAC 220-150-070: Ballast tank sediment**
  - Subsection (2) – Ballast tank sediment removal options provides methods allowed for compliance. (< 10%)
  - Subsection (3) - Reporting requirements part of WAC 220-150-030-(6). (< 10%)
- **WAC 220-150-080: Penalties and enforcement**
  - Subsection (4) – Calculation and payment of civil penalties sets base penalties between $2,000 and $5,000 and provides protocols for increasing penalties up to $27,500 per day of violation – increase from maximum $5,000 prior to 7/1/07. (1-5%)

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2. Kinds of professional services that a business is likely to need in order to comply with such requirements.

- **Compliance plans**. A business MAY benefit from contracting with a marine engineer to rectify equipment limitation or failure issues in meeting exchange requirements for those circumstances.

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3. Costs of compliance for businesses, including costs of equipment, supplies, labor, and increased administrative costs.

- **No new reporting and record keeping costs** – except for those that become listed as high risk or require compliance plans or alternative strategies if they cannot meet state regulations. (< 5%)

- **New fees for filing safety exemption**. The department must assess a minor $500 fee on vessels claiming a safety exemption. Very low frequency (<0.1%) currently claiming a safety exemption.

- **No new required costs for equipment, supplies, or labor expected to meet regulations.** Vessel operators have option to retain, exchange, use exchange alternatives to meet regulations, or identify how they plan to meet requirements over time using compliance plans or alternative strategies.

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4. Will compliance with the rule cause businesses to lose sales or revenue?

- **No or minor new impacts to sales or revenue expected**.

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5. Cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules, using one or more of the following as a basis for comparing costs:

(a) Cost per employee;
(b) Cost per hour of labor; or
(c) Cost per one hundred dollars of sales.

- **Minimal reporting and record keeping costs** – except for those that become listed as high risk or require compliance plans or alternative strategies if they cannot meet state regulations.

- **$500 fee for safety exemptions.** Minimal cost based on frequency of anticipated application and as compared to overall shipping business expenses.

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6. Steps taken by the agency to reduce the costs of the rule on small businesses, or reasonable justification for not doing so.

- **Minimum 300 gross tons criteria**. Vessel size is an adequate criterion for reducing the impact on small businesses with vessels capable of discharging ballast water.

- **Ballast Water Work Group**. The department developed proposed rules in consultation with its Ballast Water Work Group, consisting of state and federal agencies, tribal governments, affected industries, environmental organizations, academia, and technical interests.

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7. A description of how the agency will involve small businesses in the development of the rule.

- **Ballast Water Work Group**. The department will continue to consult with the Ballast Water Work Group to minimize small business impacts.

- **Technical Assistance**. The department will offer technical assistance to B & N Fisheries and any other future small business to help them meet state requirements as necessary.

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8. A list of industries (small and large businesses) that will be required to comply with the rule.

- **Cargo, tanker, bulker, passenger, large fishing* and other shipping industries**. *Only vessels equal to or over 300 gross tons.

Appendix 1

List of all Washington State registered businesses with vessels regulated under RCW 77.120

	Owner	Address
1	Alaska Ocean (Totem Ocean Express, Inc)	500 Alexander Ave, Tacoma, WA 98421
2	American Seafoods Co.	2025 1st ave #900, Seattle, WA 98121
3	Arctic Fjord, Inc.	400 N. 34th st. # 306, Seattle, WA 98103
4	**B&N Fisheries Co.***	**1959 NW Dock Pl. #3000, Seattle, WA, 98107**
5	Clipper Seafoods	641 W Ewing St, Seattle, WA 98119-1528
6	Coastal Transportation Inc.	4025 13TH AVE W., SEATTLE, WA 98119
7	Conoco Phillips (Polar Tankers, Inc.)	PO Box 8, Ferndale, WA 98248
8	Crowley Marine Services	1102 Massachusetts St., Seattle, 98119
9	FOSS MARITIME CO	660 W. EWING ST., SEATTLE, WA 98119
10	Glacier Fish Company LLC	1200 Westlake Ave N #900, Seattle, WA 98109
11	Icicle Vessel Holding	4019 21st Ave W. Seattle, WA 98199
12	Iquque	4257 24th Ave W, Seattle, WA 98199-1214
13	K-Sea, Pacific Division	2700 W. Commodore Way, Seattle, WA 98199,
14	Northern Hawk LLC (Northern Hawk Partners LP)	1200 Market Pl Tower 2025 1st Ave, Seattle, WA 98121
15	NVLC Freight, LLC (Northland Services, Inc.)	PO Box 24527, Seattle, WA 98124
16	OLYMPIC TUG AND BARGE, INC	PO BOX 24006, SEATTLE, WA 98124
17	Phoenix Processor LP	111 West Harrison, Seattle, WA, 98119
18	Signature Seafoods	5517 Seaview Ave NW, Seattle, WA 98107
19	Totem Ocean Trailer Express	500 Alexander Ave., Tacoma, WA 98421
20	Trident Seafoods (Nor Quest Seafoods)	5303 Shilshole Ave NW, Seattle, WA 98107
21	University of Washington	Box 1503 NE Boat St, Seattle, WA 98195

* WA Small Business with 50 or fewer employees

Appendix 2

B & N Fisheries Vessels and Discharge History
(Since December 2004)

Vessel Name	**Vessel Size** (Gross Tons)	**Ballast Water Reporting History**
Arctic Explorer	892	2006 – Discharged 286 m^3
Bristol Explorer	727	2006 – Discharged 238 m^3 2008 – Discharged 238 m^3
Epic Explorer	338	No reports found
Intrepid Explorer	538	No reports found
Northwest Explorer	816	2006 – Discharged 577 m^3
Ocean Explorer	896	No reports found
Pacific Explorer	896	2007 – Discharged 346 m^3