



PROPOSED RULE MAKING

CR-102 (August 2017)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: July 03, 2019

TIME: 11:40 AM

WSR 19-14-125

Agency: Washington Department of Fish and Wildlife (WDFW)

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 19-06-001 filed on February 20, 2019 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject)

New WACs:

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

WAC 220-640-051 Lawful possession of dead prohibited level 3 species for personal or commercial use

Amended WACs:

WAC 220-640-030 Prohibited level 1 species

WAC 220-640-050 Prohibited level 3 species.

Hearing location(s):

Date:

Time:

Location: (be specific)

Comment:

September 13-14,
2019

8:00 a.m. t

Sun Mountain Lodge
604 Patterson Lake Road
Winthrop, WA 98862

Date of intended adoption: September 16, 2019 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Scott Bird, WDFW Rules Coordinator

Address: P.O. Box 43200, Olympia, WA 98504-3200

Email: Rules.Coordinator@dfw.wa.gov

Fax: (360) 902-2155

Other:

By (date) September 10, 2019

Assistance for persons with disabilities:

Contact Delores Noyes

Phone: (360) 902-2349

Fax:

TTY: (360) 902-2207

Email: Dolores.Noyes@dfw.wa.gov

Other:

By (date) September 10, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department needs to clarify regulations for the public concerning the possession of aquatic invasive species and inspection of vessels and boating equipment to check for harmful aquatic invasive species under WAC chapter 220-640..

Reasons supporting proposal: The department needs to better clarify some of the regulations concerning the prohibition of aquatic invasive species.

Statutory authority for adoption: RCWs 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047

Statute being implemented: RCWs 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

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

Name of proponent: (person or organization) WDFW

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Captain Eric Anderson	1111 Washington Street SE Olympia, WA 98501	(360) 640-0493
Implementation:	Allen Pleus	1111 Washington Street SE, Olympia, WA 98501	(360) 902-2724
Enforcement:	Chief Steve Bear	1111 Washington Street SE, Olympia, WA 98501	(360) 902-2373

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

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:
TTY:
Email:
Other:

No: Please explain: This rule proposal does not affect hydraulics.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW ____.

Explanation of exemptions, if necessary:

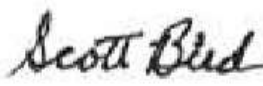
COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's analysis showing how costs were calculated. The proposed rules will have no impact on small business and less than minor costs..
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Captain Eric Anderson
 Address: 1111 Washington Street SE Olympia, WA 98501
 Phone: 360-640-0493
 Fax: 360-249-1229
 TTY:
 Email: Eric Anderson@dfw.wa.gov
 Other:

Date: July 3 2019	Signature: 
Name: Scott Bird	
Title: Rules Coordinator	

NEW SECTION

WAC 220-640-011 Failure to stop at mandatory AIS check station—Infraction. Any person who fails to stop at a mandatory check station is guilty of a gross misdemeanor under RCW 77.15.809; however, if a person has never been previously issued either a citation or warning for this violation, the violation may be issued as an infraction under RCW 77.15.160.

NEW SECTION

WAC 220-640-051 Lawful possession of dead prohibited level 3 species for personal or commercial use—Allowable forms—Records required. (1) It is lawful to possess dead prohibited level 3 species for human or animal consumption use. For purpose of this rule, "dead" is defined as the following forms:

- (a) Fully cooked;
- (b) Frozen solid;
- (c) Canned or otherwise vacuum-sealed in a container;
- (d) Preserved by drying, salting, or pickling; or
- (e) Raw/fresh if the head has been removed and/or all the internal organs have been removed.

(2) The person or commercial entity must possess the following records upon receiving and while in possession of a prohibited level 3 species in a dead form:

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

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

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

AMENDATORY SECTION (Amending WSR 18-16-042, filed 7/25/18, effective 8/25/18)

WAC 220-640-030 Prohibited level 1 species. The following species are classified as prohibited level 1 species:

(1) Molluscs: Family Dreissenidae: Zebra and quagga mussels: *Dreissena polymorpha* and *Dreissena rostriformis bugensis*.

(2) Crustaceans:

(a) Family Grapsidae: Mitten crabs: All members of the genus *Erochier*.

(b) Family Portunidae: European green crab, *Carcinus maenas*.

(3) Fish:

(a) Family Channidae: China fish, snakeheads: All members of the genus *Channa*.

(b) Family Clariidae: All members of the walking catfish family.

(c) Family Cyprinidae:

(i) Carp, Bighead, *Hypophthalmichthys nobilis*.

(ii) Carp, Black, *Mylopharyngodon piceus*.

(iii) Carp, Silver, *Hypophthalmichthys molitrix*.

(iv) Carp, Largescale Silver, *Hypophthalmichthys harmandi*.

(d) Family Esocidae: Northern pike, *Esox Lucius*.

AMENDATORY SECTION (Amending WSR 18-16-042, filed 7/25/18, effective 8/25/18)

WAC 220-640-050 Prohibited level 3 species. The following species are classified as prohibited level 3 species:

(1) Amphibians:

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

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

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

(d) In the family Ranidae:

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

(ii) Holarctic brown frogs and Palearctic green frogs of the genus *Rana*, including the following: *Rana arvalis* group (*R. arvalis*, *R. chaochiaoensis*, *R. chevronta*); *Rana chensinensis* group (*R. altaica*, *R. chensinensis*, *R. dybowskii*, *R. kukunoris*, *R. kunyuensis*, *R. ornativentris*, *R. pirica*); *Rana graeca* group (*R. graeca*, *R. italica*); *Rana japonica* group (*R. amurensis*, *R. aragonensis*, *R. japonica*, *R. omeimontis*, *R. zhenhaiensis*); the subgenus *Rugosa* (*Rana rugosa*, *Rana emeljnovi*, *Rana tientaiensis*); *Rana tagoi* group (*R. sakuraii*, *R. tagoi*); *Rana temporaria* group (*R. asiatica*, *R. dalmatina*, *R. honnorate*, *R.*

huanrenensis, *R. iberica*, *R. latastei*, *R. macrocnemis*, *R. okinavana*, *R. pyrenaica*, *R. tsushimensis*, *R. zhengi*); and in the Rana Pelophylax section, the subgenus Pelophylax (*R. bedriagae*, *R. bergeri*, *R. ceri-gensis*, *R. chosenica*, *R. cretensis*, *R. demarchii*, *R. epeirotica*, *R. fukienensis*, *R. grafti*, *R. hubeiensis*, *R. lateralis*, *R. lessonae*, *R. nigrolineata*, *R. nigromaculata*, *R. perezi*, *R. plancyi*, *R. porosa*, *R. ridibunda*, *R. saharica*, *R. shqipericana*, *R. shuchinae*, *R. terentievi*, *R. tenggerensis*); and the Rana ridibunda-Rana lessonae hybridogenetic complex species *R. esculenta* and *R. hispanica*.

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

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

(g) In the family Cryptobranchidae: Giant salamanders and hell-benders, all members of the genera Andrias and Cryptobranchus.

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

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

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

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

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

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

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

(2) Reptiles:

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

(b) In the family Emydidae:

(i) Chinese pond turtles, all members of the genus Chinemys.

(ii) Pond turtles, all members of the genus Clemmys.

(iii) European pond turtle, *Emys orbicularis*.

(iv) Asian pond turtle, all members of the genus Mauremys.

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

(3) Crustaceans:

(a) Family Cercopagidae:

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

(ii) Spiny water flea, *Bythotrephes cederstroemi*.

(b) Family Cambaridae: Crayfish: All genera.

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