

Concise Explanatory Statement

Aquatic Invasive Species

Rules amended as part of this rulemaking:

WAC 220-640-030 Prohibited level 1 aquatic animal
species WAC 220-640-050 Prohibited level 3 aquatic
animal species

Rules repealed as part of this rulemaking:

None

Rules created as part of this rulemaking:

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-
Allowable forms-Records required.

Background/Summary:

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

Any person who fails to stop at a mandatory AIS check station can only be charged with a Gross Misdemeanor (Criminal Prosecution) under RCW 77.15.809 "Unlawful use of invasive species in the second degree—Penalty". Currently, there was no "progressive discipline/penalty", making Officers/Prosecutors reluctant in pursuing charges. The WAC fixes the issue by giving officers and prosecutors a "progressive discipline/penalty" step for the violation of failing to stop at a mandatory AIS check station. It will allow the issuance of a Notice of Infraction (civil penalty) for first time offenders. Making it easier for Officers and Prosecutors to charge persons who are "second time offenders" by being able to show that the person was previously cited for the violation at a lower level, but then violated again and therefore should have a progressively higher penalty for the repeat offense.

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

Currently any person/business that possesses a prohibited level 3 in WA is guilty of a Gross Misdemeanor under RCW 77.15.809. Every restaurant/grocery store in the state of WA that offer crayfish or Frog legs for sale, in any form (cooked, frozen, dead, etc. intended for consumption) is in violation of this statute. Additionally, any person purchasing the species and therefore possessing them is in violation as well. The adopted WAC fixes the issue by giving businesses and seafood consumers a path to sell/possess level 3 species while ensuring the safety of WA State natural resources. Additionally, the WAC safeguards by requiring specific records the businesses/persons must possess as to the "form" which the level 3 species was received. The WAC also makes it easier for Officers and Prosecutors to charge persons/businesses who are in possession of "alive" level 3 species as there now are rules that the business/person could have followed to be legitimate but failed to do so. Additionally, it establishes a progressive penalty structure (possession of level 3 and failing to possess the appropriate records – punishable as a misdemeanor)

WAC 220-640-030 - Prohibited level 1 species.

*The amendment adds; Family Esocidae: Northern pike, *Esox lucius*. To the list of Prohibited level 1 species posing the highest invasive risk and are a priority for prevention and expedited rapid response management and prevention actions. Northern pike are invasive species that preys on fish such as trout, salmon and steelhead, as well as other wildlife (such as birds and small mammals). Since being illegally introduced in the 1990s, the species has spread down the Pend Oreille River into Lake Roosevelt where they become well established. There is only one "barrier", Grand Coulee Dam, that is preventing them from being introduced and established in the Columbia River Anadromous Fish zone. If Northern pike were to get below Grand Coulee Dam and become established, it would be an environmental emergency that would threaten all salmon recovery efforts that have been done in the Columbia River basin. Additionally, it would justify an environmental emergency declaration should they be detected below Grand Coulee Dam and become established in the anadromous zone.*

WAC 220-640-050 - Prohibited level 3 species.

*The amendment removes; (e) Family Esocidae: Northern pike, *Esox lucius*. From the list of prohibited level 3 species which pose a lesser level of invasive risk.*

1. Reasons for adopting these rules:

These changes are based on 2014 request legislation amending RCW chapter 77.135.

2. Differences between the proposed rule and the rule as adopted

There were no changes made between the proposed/amended rules and the adopted/amended rules.

3. Comments received during the official public comment period:

The department did not receive any comments from the public concerning proposed rules 220-640-11 and 220-640-051.

WDFW received letters of support regarding WAC 220-640-30 from the following entities:

Washington Invasive Species Council

Salmon Recovery Funding Board

Colville Confederated Tribes

Kalispel Tribe of Indians

Chelan County PUD