

HOUSE BILL REPORT

HB 2458

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to invasive species.

Brief Description: Concerning invasive species.

Sponsors: Representatives MacEwen, Lytton, Chandler, Stanford, Blake, Buys, Schmick, Takko, Kretz, Nealey, Morris, Warnick, Tharinger, Springer, Ryu, Tarleton, Fagan and Van De Wege; by request of Department of Fish and Wildlife.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/23/14, 2/5/14 [DPS].

Brief Summary of Substitute Bill

- Reorganizes, amends, and expands on statutes providing for the prevention and integrated management of aquatic invasive species.
- Establishes a new schema for classifying invasive species.
- Provides a suite of management tools for sites designated for emergency conditions, quarantines, temporary rapid responses, and longer-term infested site management.
- Establishes a framework of inspections, check stations, and decontamination for portable aquatic conveyances potentially harboring invasive species.
- Expands invasive species inspections to target a broad spectrum of aquatic conveyances, rather than primarily targeting watercraft.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Blake, Chair; Lytton, Vice Chair; Buys, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Chandler, Dunshee, Haigh, Hurst, Kretz, Orcutt, Pettigrew, Schmick, Stanford, Van De Wege and Warnick.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Jacob Lipson (786-7196).

Background:

The Washington Department of Fish and Wildlife (WDFW) has a broad mission to protect fish, wildlife, and ecosystems, and administers several laws that manage and restrict aquatic invasive species. To enforce various fish and wildlife laws, fish and wildlife officers are deployed in the field alongside federal, state, and local law enforcement officials who serve as ex officio WDFW officers.

In 2006 the Legislature established the Invasive Species Council (Council) to provide policy-level direction, planning, and coordination regarding the prevention and control of invasive species issues in Washington. The statutory goals of the Council include serving as a forum for identifying and understanding invasive species, facilitating joint planning and cooperation among relevant entities, educating the public, and providing policy advice to the Legislature. Council membership consists of representatives from state and federal agencies, local governments, and other members invited by the Council.

Classification and Regulation of Aquatic Invasive Species.

In accordance with a WDFW recommendation, the Fish and Wildlife Commission (Commission) has the authority to designate two categories of aquatic invasive animal species: prohibited species with high invasion risk levels; and regulated species with moderate but manageable invasion risk, as well as beneficial use.

Unless authorized by the WDFW, it is generally illegal to possess, transport, propagate, buy, sell, or release a prohibited or regulated aquatic animal species. The release of regulated aquatic animal species is also illegal. In general these offenses are punishable as gross misdemeanors. Civil infractions may be issued for entering the state with uncertified watercraft, transporting aquatic plants, or other violations of aquatic invasive species prevention requirements.

Invasive Species Proliferation Prevention Measures.

When the Commission identifies a prohibited aquatic animal species infestation, the WDFW must develop a rapid response plan to address potential actions such as eradication, containment, enforcement, and public education. The WDFW and other agencies may post signs at an infestation site to identify the infestation and notify the public of the hazards and penalties for possessing and transporting these species.

Anyone that has used a commercial or recreational watercraft in certain states or countries must, upon entering Washington, possess documentation that the watercraft is free of invasive species. This applies when the watercraft has been used in an area designated as an aquatic invasive species state or country by rule of the WDFW.

Washington Department of Fish and Wildlife officers may stop and inspect watercraft suspected to be transporting aquatic invasive species. The WDFW may also require anyone transporting a watercraft to stop at a check station. Check stations must be plainly marked and operated by at least one WDFW officer.

A person with a watercraft used in an aquatic invasive species state or country, or that is contaminated with invasive species, must bear the expense for any necessary impoundment, transportation, or decontamination. A person who stops at a check station and complies with WDFW directives is exempt from aquatic invasive species-related criminal penalties and forfeiture.

Watercraft Excise Tax.

Many types of vessels are subject to a watercraft excise tax which is applied at the time of vessel registration. Commercial vessels, government-owned vessels, nonprofit-owned vessels, vessels smaller than 16 feet, and certain other vessels are exempt from the watercraft excise tax. The amount of the watercraft excise tax is 0.5 percent of the fair market value of the vessel, or \$5, whichever is greater.

Summary of Substitute Bill:

The Role of WDFW in Invasive Species Management.

The WDFW is designated as the lead state agency for managing invasive animal species, with the exception of certain species managed by the Department of Agriculture, the Department of Natural Resources, and the Department of Health. The WDFW is authorized to:

- develop integrated invasive species management actions and programs;
- maintain outreach and education programs, and post signs and information at boat launches, ports, state parks, and other locations;
- align invasive species management with regional, national, and international standards;
- participate in management efforts with other governments and enter partnerships;
- manage invasive species to preserve native species, promote salmon recovery, and protect threatened or endangered species;
- provide technical assistance to tribal, local, federal and private groups; and
- develop invasive species management tools.

Other species classification systems used by the WDFW are not replaced, but invasive species management must be streamlined under the newly integrated Invasive Species Management Program.

Classification of Invasive Species.

The WDFW, in coordination with the Council, may designate three levels of prohibited invasive species based on the risks, management actions, and resources required to manage the invasive species. Prohibited species are divided into three categories:

- Level 1 prohibited species are deemed to pose a high invasive risk, and are a priority for prevention and rapid response management.
- Level 2 prohibited species are deemed to pose a high invasive risk, and are a long-term management priority.
- Level 3 prohibited species are deemed to pose a moderate risk and may be appropriate for management response.

In addition, the WDFW may classify and list by rule three types of regulated species:

- Type A regulated species are non-native aquatic species deemed a low to moderate invasive risk, have a beneficial use, and are a priority for management for both invasive risk and beneficial use led or approved by the WDFW.
- Type B regulated species are non-native aquatic species deemed a low or unknown risk and are used for commercial or personal uses, like aquariums or as non-domesticated pets.
- Type C regulated species are all other non-native aquatic species.

Type B and type C regulated species are not required to be listed by rule. Non-native aquatic animal species are automatically managed as type B or type C regulated species unless they are listed by rule as prohibited levels 1, 2, and 3, or a regulated type A species.

The WDFW and Council must adopt rules prior to classifying any species as prohibited levels 1, 2, and 3, or regulated type A. Prior to the adoption of classification rules by the WDFW, certain species are initially designated for management under prohibited levels 1, 2, and 3, and regulated type A.

In general, the designation of both prohibited and regulated species may be specified by species or larger taxonomic groups, and align with regional and national classification schemes. Designations must be either statewide or for a specific region or water body. The classification of species may be accompanied by defined acceptable possession and introduction conditions.

Restrictions on Regulated and Prohibited Species.

Regulated and prohibited species are subject to the following restrictions:

- Levels 1, 2, and 3 prohibited species may not be possessed, trafficked, or introduced into a water body or property without WDFW authorization or a permit.
- Types A, B, and C regulated species require a permit or WDFW authorization in order to be introduced to a water body or property.
- Type B regulated species being used for commercial purposes must be clearly identified in writing by species or subspecies.

If necessary, the WDFW is authorized to quarantine a water body, property, or region to protect environmental, economic, or human health interests from a level 1 or 2 prohibited invasive species. Movement of water and certain transportable property from quarantined places may be limited or conditioned by the WDFW.

The WDFW may also ask the Governor to declare an emergency to prevent the spread of a level 1 or 2 prohibited species that seriously endangers or threatens the environment, economy, human health, or the state's well-being. Upon approval from the Governor, the WDFW may implement measures to prevent, contain, control, or eradicate the invasive species. Surface and aerial pesticide application may be used after an evaluation of all other alternative emergency management actions. The WDFW must evaluate the effects of any emergency actions and report to the Governor no less than every 10 days.

Rapid Response Actions and Infested Site Management.

Where a level 1 prohibited species is detected, the WDFW may implement rapid response actions, including declaring a quarantine or taking other actions to control or eradicate the species. For rapid response actions exceeding seven days, the WDFW may implement an incident command system.

Where a level 2 species is detected, the WDFW may manage the property or water body as an infested site, and may declare a quarantine or take other actions to control or eradicate the species. Washington Department of Fish and Wildlife consultation with government, tribal, and private site owners is required during infested site management. The WDFW, in consultation with the Council, may establish by rule requirements for property or water body owners to develop and implement infested site management actions. Notice and updates of WDFW rapid response or infested site management actions must also be communicated to property or water body owners. When placing signs at an infested site, the WDFW must consult with property owners.

Rapid response actions cease when the species is eradicated, contained, reclassified for the water body, or designated for management as an infested site. Infested site management ceases when the species is eradicated, contained, or reclassified for the water body.

The WDFW may enter into cooperative partnerships for rapid response actions and infested site management actions. Rapid response and infested site management actions must both be implemented to contain, control, and eradicate level 1 and 2 species, while minimizing adverse economic and environmental impacts and protecting human health.

The WDFW is designated as the lead agency for rapid response and infested site management. Where federal, tribal, or other sovereign entities have jurisdiction, the WDFW must consult with analogous government entities to implement coordinated management actions. The WDFW may also assist in actions outside their normal jurisdictional boundaries in order to prevent the spread of invasive species into state waters.

Aquatic Conveyances Restrictions: Inspections, Check Station, and Decontamination.

Aquatic conveyances are defined as transportable personal property that have the potential to move aquatic invasive species, such as float planes, watercraft, construction equipment, personal fishing and hunting gear, and materials used for aquatic habitat mitigation or restoration.

People in possession of an aquatic conveyance must have a certificate of inspection prior to entering Washington by air, road, or water. This certificate must be presented upon request to a WDFW officer or ex officio fish and wildlife officer. Certificates of inspection are valid until the next use in a water body.

The WDFW must adopt rules pertaining to:

- the types of conveyances that require certificates of inspection;
- the integration of certificates with similar permits;
- the mechanisms for authorizing the movement of a conveyance to a location where a certificate may be obtained; and
- the application of certificate requirements to shared boundary waters.

Aquatic conveyances must be cleaned and drained after use in a water body or property. Washington Department of Fish and Wildlife officers or ex officio officers may require persons transporting aquatic conveyances to clean and drain the conveyance on-location or at a nearby site. Clean and drain requirements may be enforced immediately for watercraft and seaplanes. However, the WDFW must adopt rules before implementing clean and drain requirements applicable to other aquatic conveyances.

The WDFW may establish mandatory check stations staffed by a WDFW officer, ex officio officer, or a WDFW-appointed representative. Check stations may be used to inspect aquatic conveyances for invasive species and compliance with clean and drain requirements. Watercraft must stop at mandatory check stations, and the WDFW may adopt rules establishing requirements for other aquatic conveyances at check stations. Persons stopping at inspection stations must clean and drain their equipment if ordered, or follow decontamination orders if an invasive species is found.

The WDFW may operate decontamination stations statewide for voluntary and mandatory use. Decontamination stations may be separate from inspection stations. Inspection and decontamination stations must be separate from commercial vehicle weigh stations. The WDFW must adopt inspection and decontamination standards that align with regional, national, and international standards, where practical and appropriate.

Representatives of the WDFW may operate inspection and decontamination stations. Volunteers, law enforcement agencies, and independent businesses may also serve as WDFW representatives, subject to rules adopted by the WDFW. Within two years, the WDFW must recommend a fee schedule to the Legislature to compensate the services of WDFW representatives.

Enforcement.

The WDFW is granted authority to enter a property or water body in order to conduct aquatic invasive species enforcement or management actions including inspections, collections of samples, and taking action to contain, control, or eradicate invasive species. Prior to entering a property, the WDFW must make a reasonable outreach effort to contact the property owner, but may apply to the court for a search warrant if denied access. Where it finds reasonable cause, a court may issue warrants for the WDFW to conduct aquatic invasive species management actions on a property or water body.

People aggrieved or adversely affected by decontamination orders, infested site management actions, or rapid response management actions may request an administrative hearing asserting the invalidity of the action.

Upon discovery of an aquatic invasive species carried in an aquatic conveyance, WDFW officers or ex officio officers may issue a decontamination order for on-site decontamination, prohibit a launch, require transport to a decontamination facility, or seize the conveyance if there is a high risk of aquatic invasive species introduction. Persons possessing the aquatic conveyance carrying the invasive species bear the costs of seizure, transportation, and decontamination. Unless the aquatic conveyance is forfeited, it must be returned after the conclusion of decontamination and the receipt of a certificate of inspection.

Courts may issue search and arrest warrants where there is probable cause of a criminal violation.

The list of civil infractions for invasive species violations is now expanded to include the:

- failure to possess an aquatic conveyance certification;
- transportation of aquatic plants; and
- violation of clean and drain requirements or orders.

The list of gross misdemeanors for invasive species violations is now expanded to include:

- failure to stop at or return to a mandatory check station;
- failure to allow the inspection of an aquatic conveyance at a check station;
- failure to comply with decontamination orders;
- unauthorized possession of a prohibited level 1 or 2 species;
- unauthorized possession or introduction of a prohibited level 3 species;
- unauthorized introduction of a regulated species; and
- insufficient labeling of a regulated type B commercial species.

A class C felony is also established for persons who traffic or introduce a level 1 or 2 prohibited species onto a property or water body, or who twice violate laws with gross misdemeanor penalties within a five year period. With certain exceptions, violators of criminal laws are subject to felony or misdemeanor criminal penalties, as well as all costs of capturing, killing, or controlling invasive species and its progeny.

Other Provisions.

The WDFW is granted rule-making authority, in addition to specific provisions which require the WDFW to adopt rules. Numerous definitions are newly created or amended from use in existing invasive species statutes so as to be applicable to the new scope of aquatic invasive species prevention and management programs.

The invasive species management activities of the chapter do not apply to non-native invasive species introduced from ballast water or private aquaculture operations. Management of invasive species from those activities is maintained under existing programs.

An aquatic invasive species prevention account is created to accept certain WDFW fees levied on vessels. Separately, funds in the aquatic species enforcement account may be appropriated to develop the WDFW's enforcement program. Ten percent of water craft excise tax revenue is directed to invasive species management and enforcement. A competitive grant program is established to provide up to \$250,000 per year to local governments, state agencies, academic institutions, and nonprofit groups to manage level 1 or 2 prohibited species, develop cooperative agreements, or conduct research with on the ground implications for aquatic invasive species efforts.

Substitute Bill Compared to Original Bill:

The substitute bill redirects 10 percent of the water craft excise tax payable at the time of vessel registration from the General Fund to the account for aquatic invasive species management (6 percent of the excise tax) and the account for aquatic invasive species enforcement activities (4 percent of the excise tax).

The substitute bill removes the new WDFW authority to issue directives to property or water body owners to develop and implement infested site management actions. Instead, the WDFW authority to conduct rapid response and infested site management activities on private property or water bodies is focused around a warrant process to obtain access to property to allow the WDFW to directly conduct necessary management actions. The WDFW may only enter private property at a reasonable time, and must make a reasonable attempt to contact the owner prior to entering a property. The failure to allow execution of a warrant authorizing an inspection or management action for aquatic invasive species is considered interference with WDFW operations and is punishable as a gross misdemeanor.

The substitute bill establishes quarantine declarations as a separate management tool from infested site management actions or rapid response management actions, and specifies quarantine declaration notice requirements for property, property owners, and the public. The substitute bill eliminates the new gross misdemeanor for failure to comply with infested site or rapid response management actions, but retains the gross misdemeanor for violations of quarantine declarations. The substitute bill also eliminates the new gross misdemeanor for failure to comply with an aquatic conveyance inspection directive based on a reasonable suspicion by a WDFW officer.

The substitute bill establishes a competitive grant program to provide up to \$250,000 per year to local governments, state agencies, academic institutions, and nonprofit groups to manage level 1 or 2 prohibited species, develop cooperative agreements, or conduct research with on-the-ground implications for aquatic invasive species efforts.

The substitute bill adds certain new definitions to the Aquatic Invasive Species chapter.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 5, 2014.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The consequences of invasive species can be devastating environmentally and economically. We don't have the luxury of time, and invasive species like Quagga mussels are already impacting freshwaters nationwide. Prevention is the best policy: invasive species are an invisible biological wildfire, and there is almost no way to put out the fire once it starts. If prevention fails, rapid-response is the next best option. This bill creates new prevention and rapid-response authorities for the WDFW to battle invasive species. The Pacific Northwest has been lucky to be one of the last places to avoid the negative impacts of some of these species. Every year that we successfully keep invasive species out of the region represents a huge economic savings in terms of avoided costs. This bill has been vetted through many stakeholders, and initially concerned industries are now pleased with

the bill. The bill will integrate the WDFW responsibilities with the planning advice of the Council, which is composed of many different government and stakeholder representatives. This bill will establish an integrated framework of management authorities for the WDFW and other partners, and fits into a regional invasive species initiative that has already established similar laws in neighboring states. This bill creates an account, but there will need to be more and restored funding mechanisms for the invasive species programs that this bill puts in place.

(Opposed) None.

Persons Testifying: Representative MacEwen, prime sponsor; Wendy Brown, Washington Invasive Species Council; Diane Cooper, Pacific Coast Shellfish Growers Association; Eric Anderson, Idaho House of Representatives; Carl Klein, Bill Tweit, and Allen Pleus, Washington Department of Fish and Wildlife; Bill Robinson, The Nature Conservancy; and Ben Buchholz, City of Bellingham.

Persons Signed In To Testify But Not Testifying: None.