

Summary Sheet

Meeting dates: September 13 & 14, 2019

Agenda item: Aquatic Invasive Species rule changes

Presenter(s): Captain Eric Anderson, Enforcement Program, Eric Winther, Pikeminnow Unit Lead, Fish Program, Bill Tweit, Special Assistant, Fish Program

Background summary:

The Department seeks to create two new rules and amend two existing rules. These proposed rule changes are as follows:

**(1) NEW WAC 220-640-011- Failure to stop at mandatory AIS check station—
Infraction.**

This proposed rule change modifies an existing WAC. Currently, any person who fails to stop at a mandatory Aquatic Invasive Species (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”. This condition impairs the Department’s Enforcement Fish and Wildlife Officer (FWO) efforts to actively enforce the mandatory check station stop law and therefore mitigate the damage done by AIS in our state.

The reason is that FWOs are reluctant to issue a gross misdemeanor citation, even if warranted, as most county prosecutors will dismiss the charge and not pursue prosecution if it is the person’s first offense – which is the majority of cases. In addition, under State Court Rules, it is mandatory that defendants appear in person at their hearings; many of the defendant in these AIS cases are travelling through the county where they were cited a live far from the county district court. Consequently, this further deters prosecutors (and FWOs) from pursuing the case.

The proposed rule addresses the foregoing issues by providing both FWOs and prosecutors a more progressive penalty for the violation of failing to stop at a mandatory AIS check station. It will allow the FWO to issue a Notice of Infraction (civil penalty) for first time offenders (those who have never been previously cited or warned for the violation. Counties will also be encouraged to prosecute situations where a gross misdemeanor citation is issued as they will know it is due to repeat violations.

(2) NEW 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 Washington State, whether alive or dead, is guilty of a Gross Misdemeanor (Criminal Prosecution) under RCW 77.15.809 Unlawful use of invasive species in the second degree—Penalty. There are numerous prohibited species used in the market trade in a dead form (e.g. cooked, frozen, canned, etc.) that the Department considers acceptable, but the law does not specifically allow.

For example, many restaurant/grocery stores in the state that offer *Non-native* crayfish or frog legs for sale are in violation of this statute. Technically, although not enforced if in

dead form, any person purchasing the species and therefore possessing them would be in violation as well. The commercial crayfish market is almost exclusively based on; Family – *Cambaridae*; commonly known as Red Swamp or Rusty Crayfish (both Level 3 prohibited species); and the commercial Frog Leg Market is almost exclusively based on; Family - *Ranidae*:(i) American Bull frog, *Rana (Lithobates) catesbeiana*.

The proposed rule addresses the foregoing issues by providing businesses and consumers a method where they can lawfully sell/possess prohibited level 3 species while ensuring the safety of state natural resources. Additionally, the amendment requires the retention by businesses of specific records as to the “form” which the prohibited level 3 species was received. This clarifies to the business owner that it is unlawful to import live prohibited 3 species even if they intended to only sell them in their dead form, and it will make it easier for FWOs and prosecutors to charge persons/businesses who violate these requirements.

(3A)WAC 220-640-030 - Prohibited level 1 species.

The Department proposes to modify existing WAC to reclassify Northern Pike to a higher threat level. Currently, Northern Pike (*Esox lucius*) are classified as “prohibited level 3 species” statewide under RCW 77.135.030(1)(c) and as listed under WAC 220-640-050(4)(e). RCW 77.135.030 directs the Department to classify non-native aquatic animal species to one of six classifications based on degree of invasive risk, the type of management action required, and resources available to conduct the management action. The Department has determined that this level of AIS risk is inadequate for Northern Pike

Northern Pike are AIS that prey 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 have become well established. There is only one “barrier” - Grand Coulee Dam - 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.

The proposed rule addresses these concerns by reclassifying Northern Pike as a prohibited level 1 species, defined as those species that “pose a high invasive risk and are a priority for prevention and expedited rapid response management actions.”

(3B) WAC 220-640-050 - Prohibited level 3 species.

Currently, Northern Pike (*Esox lucius*) are classified as “prohibited level 3 species” statewide under RCW 77.135.030(1)(c) and as listed under WAC 220-640-050(4)(e).

The proposed rule deletes this species from listing under WAC 220-640-050 as part of its reclassification to prohibited level 1 status noted above.

Staff recommendation:

Adopt new and amended rules as presented

Policy issue(s) and expected outcome:

This supports the Department's ongoing mission to prevent, monitor, identify and remove AIS from invading the state's waterways.

Fiscal impacts of agency implementation:

There are no fiscal impacts.

Public involvement process used and what you learned:

As required under RCW 77.135.030, department staff consulted with the WA Invasive Species Council (WISC) before proposing to reclassify Northern Pike as a Level 1 invasive species. The Council supported the Department's proposal. Furthermore, the department published the rule proposal online and solicited comments from the public. The department has not received any written public comments to date.

Action requested and/or proposed next steps:

Adopt the new and amended rules as presented

Draft motion language:

Motion: I move to adopt proposed new rule WAC 220-640-011 regarding failure to stop at mandatory AIS check stations, the proposed new rule in WAC 220-640-051 regarding lawful possession of certain dead AIS species, the amendment to WAC 220-640-030 that will reclassify Northern Pike as a prohibited level 1 species, and the amendment to WAC 220-640-050 that will remove Northern Pike from the prohibited level 3 species classification.

Speaking points:

My motion supports the staff recommendations for these four items. Modification of our failure to stop regulations is necessary in order to increase the effectiveness of our enforcement of those regulations, as our experience with the current regulations has revealed shortcomings in enforceability. Since our AIS check stations are the backbone of this state's efforts to prevent the spread of zebra and quagga mussels, and other AIS, into the state it is vitally important that the mandatory inspection requirements be effective. Adding a new rule to our AIS codes concerning possession of dead Level 3 AIS balances legitimate business interests in safely

allowing them in commerce with the agency's ability to control the spread of live AIS.

Finally, I strongly support the proposal to reclassify Northern Pike as a prohibited level 1 species, the highest threat category. As the staff presentation notes, Northern Pike pose a very serious threat to our salmon recovery efforts in the Basin, and research elsewhere shows that they are an ecosystem-changer wherever they have been illegally introduced. I note there is significant public interest and support for this reclassification, and believe it is an important step in improving our capability to halt further range expansions.

Post decision communications plan:

The program will prepare an announcement for the agency website.