

H.15

AN ACT RELATING TO AQUATIC NUISANCE CONTROL

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 10 V.S.A. chapter 50 is added to read:

CHAPTER 50. AQUATIC NUISANCE CONTROL

§ 1451. FINDINGS

The general assembly finds that:

(1) It is the policy of the state of Vermont that the water resources of the state shall be protected, regulated, and where necessary controlled under the authority of the state in the public interest to promote the general welfare and to protect public health and the environment.

(2) It is the policy of the state of Vermont to prevent the infestation and invasive proliferation of new aquatic species in waters of the state that result in negative environmental impacts, including habitat loss and a reduction in native biodiversity along with adverse social and economic impacts and impacts to the public health and safety.

(3) The ability to initiate quickly a response to contain and control a new aquatic species introduction before it can spread is critical to reduce future management costs and protect the integrity of Vermont's ecosystems.

(4) Infestations of new aquatic species must be detected early and acted upon swiftly to minimize economic, social, and ecological impacts as well as to increase the probability of a successful eradication effort.

§ 1452. DEFINITIONS

As used in this chapter:

(1) “Agency” means the agency of natural resources.

(2) “Aquatic nuisance” means undesirable or excessive substances or populations that interfere with the recreational potential or aquatic habitat of a body of water. Aquatic nuisances include rooted aquatic plants and animal and algal populations.

(3) “Aquatic plant” means a plant that naturally grows in water, saturated soils, or seasonally saturated soils, including algae and submerged, floating-leafed, floating, or emergent plants.

(4) “Biological controls” mean multi-cellular organisms.

(5) “Board” means the water resources panel of the natural resources board.

(6) “Lessee” means a person who acquires the right to occupancy or use of property under a lease or rental agreement.

(7) “New aquatic species” means an aquatic species that was not known to occur in a surface water of Vermont or in a segment of Lake Champlain as of January 1, 2007.

(8) "Pesticide" means any substance produced, distributed, or used for preventing, destroying, or repelling nuisance aquatic plants, insects, or other aquatic life, including lamprey. Pesticide includes unicellular organisms or extracts from unicellular organisms and does not include biological controls.

(9) "Secretary" means the secretary of natural resources.

(10) "Water resources" means the waters and the values inherent or potential in waters and their uses.

(11) "Waters" means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, and springs and all bodies of surface waters, artificial or natural, which are contained within, flow through, or border upon the state or any portion of it.

§ 1453. AQUATIC NUISANCE CONTROL PROGRAM

(a) The agency of natural resources shall establish and maintain an aquatic nuisance control program.

(b) The aquatic nuisance control program shall perform the following services:

(1) receive and respond to aquatic nuisance complaints;

(2) work with municipalities, local interest organizations, private individuals, and agencies of the state to develop long-range programs regarding aquatic nuisance controls;

(3) work with federal, state, and local governments to obtain funding for aquatic nuisance control programs;

(4) implement an aquatic species rapid response program under this chapter;

(5) administer a grant-in-aid program under section 1458 of this title;

(6) place a sign at least 2 feet by 2 feet in size which states that the water is infected with an aquatic nuisance and that a person transporting the nuisance in violation of section 1454 of this title may be subject to a penalty of up to \$1,000.00 pursuant to 23 V.S.A. § 3317, so that the sign is easily visible from a ramp used to launch vessels at any fish and wildlife access area on a body of water infected with an aquatic nuisance;

(7) provide the commissioner of fish and wildlife and the commissioner of motor vehicles with written educational information about aquatic nuisances that can be included in an envelope containing a boat registration and in a department of fish and wildlife publication pertaining to fishing and boating.

§ 1454. TRANSPORT OF AQUATIC PLANTS AND AQUATIC

NUISANCE SPECIES

(a) No person shall transport an aquatic plant or aquatic plant part, zebra mussels (*Dreissena polymorpha*), quagga mussels (*Dreissena bugensis*), or other aquatic nuisance species identified by the secretary by rule to or from any Vermont waters on the outside of a vehicle, boat, personal watercraft, trailer,

or other equipment. This section shall not restrict proper harvesting or other control activities undertaken for the purpose of eliminating or controlling the growth or propagation of aquatic plants, zebra mussels, quagga mussels, or other aquatic nuisance species.

(b) The secretary may grant exceptions to persons to allow the transport of aquatic plants, zebra mussels, quagga mussels, or other aquatic nuisance species for scientific or educational purposes. When granting exceptions, the secretary shall take into consideration both the value of the scientific or educational purpose and the risk to Vermont surface waters posed by the transport and ultimate use of the specimens. A letter from the secretary authorizing the transport must accompany the specimens during transport.

§ 1455. AQUATIC NUISANCE CONTROL PERMIT

(a) No person may use pesticides, chemicals other than pesticides, biological controls, bottom barriers, structural barriers, structural controls, or powered mechanical devices in waters of the state to control nuisance aquatic plants, insects, or other aquatic nuisances, including lamprey, unless that person has been issued a permit by the secretary.

(b) Notwithstanding other requirements set forth in chapter 47 of this title to the contrary, the secretary may issue permits under this section.

(c) Persons desiring a permit under this section shall make application to the secretary on a form prescribed by the secretary.

(d) The secretary shall issue a permit for the use of pesticides in waters of the state for the control of nuisance aquatic plants, insects, or other aquatic life, including lamprey, when the applicant demonstrates and the secretary finds:

- (1) there is no reasonable nonchemical alternative available;
- (2) there is acceptable risk to the nontarget environment;
- (3) there is negligible risk to public health;
- (4) a long-range management plan has been developed which incorporates a schedule of pesticide minimization; and
- (5) there is a public benefit to be achieved from the application of a pesticide or, in the case of a pond located entirely on a landowner's property, no undue adverse effect upon the public good.

(e) A landowner applying to use a pesticide on a pond located entirely on the landowner's property is exempt from the requirement of subdivision (d)(4) of this section.

(f) The secretary shall issue a permit for the control of aquatic nuisances by biological controls, bottom barriers, structural barriers, structural controls, powered mechanical devices, or chemicals other than pesticides when the secretary finds:

- (1) there is acceptable risk to the nontarget environment;
- (2) there is negligible risk to public health; and

(3) there is either benefit to or no undue adverse effect upon the public good.

(g) The use of bottom barriers, structural barriers, structural controls, powered mechanical devices, and copper compounds as an algaecide in waters with a surface area of one acre or less located entirely on a person's property and with an outlet where the flow can be controlled for at least three days is exempt from the permit requirements of this section.

(h) The secretary shall adopt procedures under 3 V.S.A. chapter 25 which will provide an opportunity for public review and comment on permit applications. The procedures shall classify permit applications by degree of environmental risk involved and establish appropriate opportunities for public notice and comment for each class.

(i) An aquatic nuisance control permit issued under this section shall:

(1) specify in writing the secretary's findings under subsection (d) or (f) of this section;

(2) specify the location, manner, nature, and frequency of the permitted activity;

(3) contain additional conditions, requirements, and restrictions as the secretary deems necessary to preserve and protect the quality of the receiving waters, to protect the public health, and to minimize the impact on the

nontarget environment. Such conditions may include requirements concerning recording, reporting, and monitoring:

(4) be valid for the period of time specified in the permit, not to exceed three years for chemical control, and not to exceed ten years for nonchemical control.

(j) An aquatic nuisance control permit issued under this chapter may be renewed from time to time upon application to the secretary. The process of permit renewal will be consistent with the requirements of this section.

(k) An applicant for a permit under this section shall pay an application fee as required by 3 V.S.A. § 2822. The agency of natural resources shall be exempt from this fee requirement.

(l) No permit shall be required under this section for mosquito control activities that are regulated by the agency of agriculture, food and markets, provided that:

(1) Prior to authorizing the use of larvicides or pupacides in waters of the state, the secretary of agriculture, food and markets shall designate acceptable control products and methods for their use and issue permits pursuant to 6 V.S.A. § 1083(5); and

(2) On an annual basis, the secretary of agriculture, food and markets shall notify the secretary of the location of all authorized mosquito control

applications to the waters of the state that took place during the reporting year and the type and quantity of larvicide and pupacide used at each location.

(m) The secretary may issue general permits for the use of nonchemical aquatic nuisance control activities provided that the secretary makes the findings required in subsection (f) of this section. A general permit issued under this subsection is not required to specify the exact location or the frequency of the permitted activity.

§ 1456. AQUATIC SPECIES RAPID RESPONSE GENERAL PERMITS

(a) Notwithstanding the requirements of section 1455 of this title, the secretary may issue an aquatic species rapid response general permit under this section for a term not to exceed ten years for the control of a nonindigenous new aquatic species. This general permit shall identify the control technique, including the use of biological controls, pesticides, and any other control techniques for the nonindigenous new aquatic species for which coverage may be sought under the permit.

(b) Applications for coverage under this general permit shall be limited to the commissioner of environmental conservation and the commissioner of fish and wildlife. The application shall state the grounds for declaring an emergency situation as defined in subsection (f) of this section. The application shall identify the nonindigenous new aquatic species and control techniques selected to respond to the emergency.

(c) The secretary shall provide notice of the application to the municipal clerk of the municipality or municipalities in which the proposed control activity will be conducted at the time the request for authorization is filed with the secretary. The secretary shall provide an opportunity for written comment regarding whether the request complies with the terms and conditions of the aquatic species rapid response general permit for 10 days following receipt of the request for authorization.

(d) The secretary may issue an authorization under an aquatic species rapid response general permit only when the secretary finds:

(1) that an emergency exists; and

(2) that the proposed control technique meets the requirements of the general permit and is acceptable when considering the emergency situation.

(e) Authorization to act under the terms of a general permit issued under this section shall not exceed three years.

(f) Prior to determining that a nonindigenous new aquatic species emergency exists, the secretary shall consider the following factors:

(1) the likelihood that the nonindigenous new aquatic species will cause harm to human health, safety, or the environment;

(2) the likelihood that the nonindigenous new aquatic species will cause significant harm to the economy;

(3) the magnitude of the potential adverse impact of the nonindigenous new aquatic species upon public health, safety, the environment, native biodiversity, water bodies, outdoor recreation, or any other use of the state's water resources;

(4) the likelihood that the nonindigenous new aquatic species would naturalize in the state if not immediately controlled;

(5) the rate at which the invasion would spread throughout the state; and

(6) the difficulty to control the spread of the nonindigenous new aquatic species in the state.

§ 1457. ENTRANCE UPON LANDS TO PREVENT THE INTRODUCTION
AND SPREAD OF NEW AQUATIC SPECIES

(a) The aquatic nuisance control program shall take reasonable steps to prevent the introduction and spread of new aquatic species that may become invasive in the state. To accomplish this objective, the secretary or his or her agent may, after first obtaining the permission of the landowner or lessee, enter upon lands for the following purposes:

(1) to survey for, inspect, or investigate conditions relating to new aquatic species that may become invasive;

(2) to collect information to issue coverage under rapid response general permits under section 1456 of this title;

(3) to conduct or use control techniques that are available under or

authorized by a rapid response general permit issued under section 1456 of this title; and

(4) to determine whether the rules of the agency adopted or issued under this chapter are being complied with.

(b) If a land owner refuses to grant the secretary or his or her agent permission to enter onto the owner's land under this section, the secretary or the duly authorized representative of the secretary may apply for and obtain a warrant or subpoena to allow such entry, surveying, collection, and control as is necessary to protect human health, safety, and the environment or prevent economic loss.

§ 1458. GRANT-IN-AID TO MUNICIPALITIES AND AGENCIES OF THE
STATE

(a) A municipality or agency of the state which desires state assistance to control aquatic nuisances may apply in writing to the agency of natural resources in a manner prescribed by the agency of natural resources.

(b) When the agency finds that a proposed aquatic nuisance control program is suitable to control or minimize the effect an aquatic nuisance has on water quality and water use, it may award a grant of 75 percent or less of the project costs as determined by the agency. Recurring maintenance projects may be awarded grants of 75 percent or less of the annual project cost. In

approving requests and determining the amount of any grant, the agency shall consider the following:

- (1) the use of the waters by persons outside the municipality in which the waters are located;
- (2) the long-range effect of the control project;
- (3) the recreational use of the waters; and
- (4) the effectiveness of municipal shoreland zoning and other controls in minimizing or preventing existing or new development from having any adverse effects on the waters subject to the control program.

(c) The agency shall make awards to priority projects to the extent funds are available. First priority shall be projects to manage incipient infestations of aquatic nuisances, second priority shall be projects to prevent or control the further spread of aquatic nuisances, and third priority shall be recurring maintenance projects. In establishing priorities for individual projects, the agency shall consider the following:

- (1) public accessibility and recreational uses;
- (2) the importance to commercial, agricultural, or other interests;
- (3) the degree of local interest, as manifested by municipal or other contributions to the project;
- (4) local efforts to control aquatic nuisances;

(5) other considerations affecting feasibility, probability of achieving long-term control, and necessity or advantage of the proposed work; and

(6) the extent to which the control project is a developmental rather than a maintenance program.

(d) With the approval of the secretary, the agency may use funds provided under this section as well as other funds for restoration, management, or protection projects or for studies in the best interests of the state when the appropriate municipal applicant is not available or not eligible to receive a grant.

(e) When the agency finds that a proposed aquatic nuisance control program is necessary and involves construction or installation of permanent facilities designed to control or minimize the effect that an aquatic nuisance has on water quality or water use, it may award a grant of up to 50 percent of the nonfederal costs of the project provided that evidence is received that the project applicant has voted funds in a specific amount to undertake the project. The applicant shall demonstrate it has or will acquire adequate interests in the site of the project to provide undisturbed possession and use during the life of the project and shall demonstrate ability to operate and maintain the project. The applicant may enter into agreements with the agency for prosecution of all or any portion of the project. For purposes of this subsection, corporations registered with the secretary of state may be eligible applicants.

(f) The agency may make periodic grant payments upon submission by the grantee showing that costs for which reimbursement is requested have been incurred and paid by the grantee. Partial payments shall be made not more frequently than monthly. After the project has been completed and its costs audited by the agency, the agency shall certify the remainder of the award to the commissioner of finance and management who shall issue his or her warrant for payment. Interest costs incurred in local short-term borrowing of the grant amount may be reimbursed as part of the grant.

§ 1459. JOINT MUNICIPAL PARTICIPATION

Should the shorelands of waters for which funds are requested under sections 1451–1460 of this title be under more than one municipal governmental jurisdiction, the provisions herein shall apply to the respective municipalities under a joint application, except that the required municipal contribution shall be apportioned among the respective municipalities.

§ 1460. RULEMAKING

The secretary may adopt rules to implement the requirements of this chapter.

Sec. 2. 10 V.S.A. § 8003(a) is amended to read:

(a) The secretary may take action under this chapter to enforce the following statutes:

(1) [Deleted.]

(2) 10 V.S.A. chapter 23, relating to air quality;

(3) 10 V.S.A. chapters 37, 47, and 56, relating to water pollution control, water quality standards, water resources management, and public water supply;

(4) 10 V.S.A. chapters 41 and 43, relating to dams and stream alterations;

(5) 10 V.S.A. chapter ~~37~~ 50, relating to the control of aquatic species and introduction of algicides, pesticides, and herbicides;

* * *

Sec. 3. 10 V.S.A. § 8503(a) is amended to read:

(a) This chapter shall govern all appeals of an act or decision of the secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:

(1) The following provisions of this title:

(A) chapter 23 (air pollution control).

(B) ~~section 922~~ chapter 50 (aquatic ~~nuisance~~ species control ~~grants-in-aid~~).

* * *

Sec. 4. REPEAL

Sections 921, 922, 923, 924, 1263a, and 1266 of Title 10 are repealed on the effective date of chapter 50 of Title 10.

Sec. 5. 23 V.S.A. § 3305(k) is amended to read:

(k) The commissioner shall enclose with every permanent and temporary motorboat registration and registration renewal certificate issued pursuant to this chapter ~~the following a statement: “I. Transporting zebra mussels, or Eurasian milfoil to or from any Vermont water surface is illegal (10 V.S.A. § 1266).~~

~~“II. If your boat or equipment is exposed to Lake Champlain or any other zebra mussel or Eurasian milfoil infested water, the following steps should be taken prior to putting your boat or equipment in another Vermont lake, pond or other water body:~~

~~“A. Inspect for and scrape off from your boat’s hull or equipment or any exposed areas any visible mussels or milfoil.~~

~~“B. Carefully flush with clean water all boat hulls, outdrive, live wells, bilge, trailers, anchors, ropes, bait buckets, raw engine cabling systems, and other boat parts or equipment.~~

~~“C. Dry boats, trailers, and equipment thoroughly in the sun.” , based on~~
current aquatic nuisance threats and spread prevention methods, regarding the

danger of aquatic nuisances, how aquatic nuisance species are spread, and how spread of aquatic nuisance species may be controlled.

Sec. 6. 23 V.S.A. § 3305b is amended to read:

§ 3305b. BOATING SAFETY EDUCATION; RULES

(a) When required. A person born after January 1, 1974 shall not operate a motorboat on the public waters of this state without first obtaining a certificate of boating education.

(b) Possession of certificate. A person who is required to have a certificate of boating education shall:

(1) possess the certificate when operating a motorboat on the public waters of the state; and

(2) show the certificate on the demand of an enforcement officer wearing insignia identifying him or her as such or operating a law enforcement motorboat or vessel. However, no person charged with violating this subsection shall be convicted if the person produces in court, to the officer, or to a state's attorney a certificate which was valid at the time the violation occurred.

(c) Exemptions. The following persons are exempt from the requirements of this section:

(1) a person who is licensed by the United States Coast Guard to operate a vessel for commercial purposes;

(2) a person operating a vessel on a body of water located on private property; and

(3) any other person exempted by rules of the department of public safety.

(d) Rules. The department of public safety shall:

(1) adopt rules that establish criteria for a course of instruction in boating safety education;

(2) adopt rules relating to transient boaters and persons who hire chartered vessels;

(3) administer a verbal test when appropriate;

(4) coordinate a statewide program of boating safety instruction and certification and ensure that a course of boating safety education is available within each county; ~~and~~

(5) ensure that a course of boating safety education is available at the earliest practicable age for children; and

(6) ensure that the course includes an educational component regarding the environmental harm caused by aquatic nuisance species and how the spread of such species may be controlled when boaters follow specific steps to clean boats and trailers after use in state waters.

(e) Hours of instruction. Any course of boating safety education that is offered shall provide a minimum of eight hours of instruction.

(f) Persons offering courses. The following persons may offer the course of instruction in boating safety education if approved by the department of public safety:

- (1) the department of public safety;
- (2) the United States Coast Guard Auxiliary;
- (3) the United States Power Squadron;
- (4) a political subdivision;
- (5) a municipal corporation;
- (6) a state agency;
- (7) a public or nonpublic school;
- (8) any group, firm, association, or person.

(g) Issuance of certificate. The department of public safety or its designee, shall issue a certificate of boating safety education to a person who:

- (1) passes the departmentally prescribed course in boating safety education; or
- (2) passes a boating safety equivalency examination administered by persons authorized to offer the course on boating safety education.

(h) Education materials. Upon request, the department of public safety shall provide, without charge, boating safety education materials to persons who plan to take the boating safety equivalency examination.

(i) Lifetime issuance. Once issued, the certificate of boating safety education is valid for the lifetime of the person to whom it was issued and may not be revoked by the department of public safety or a court of law.

(j) Certificate replacement. The department of public safety shall replace, without charge, a lost or destroyed certificate if the department issued the certificate or has a record that the certificate was issued.

(k) Out-of-state certificate. A boating safety certificate issued in another state or country in accordance with or substantially equivalent to criteria of the National Association of State Boating Law Administrators is sufficient to comply with the requirements of this section.

Sec. 7. 23 V.S.A. § 3319 is amended to read:

§ 3319. FEES COLLECTED; SPECIAL FUND

(a) There is hereby established a special fund to be known as the motorboat registration fund for the purposes of ensuring that the fees and penalties collected under this subchapter are utilized in the protection and maintenance of the state's water resources. Any interest earned on the monies in this fund will be deposited in the general fund.

(b) The fees and penalties collected under the provisions of this subchapter, excluding surcharges collected under subsection 3305(b) and subdivisions 3305(c)(3)(A) and (B) of this title, shall be deposited in the motorboat registration fund and shall be allocated as follows:

(1) 15 percent to the department of public safety, to be used for enforcement of this subchapter and implementation of a boating safety education program;

(2) 50 percent to the department of fish and wildlife, to be used: to match federal funds; for upgrading and expanding boating access areas and facilities located at those areas; for developing and constructing new boating access areas; and for facilitating or establishing and maintaining pump out stations, which may be, in the discretion of the commissioner, constructed or operated either by the department or on a contractual basis by a private person or entity. Users shall be charged reasonable and appropriate fees;

(3) 25 percent to the department of environmental conservation for the purpose of aquatic nuisance control pursuant to ~~10 V.S.A. §§ 921, 922, 923, and 1263a~~ chapter 50 of Title 10;

(4) 10 percent to the agency of agriculture, food and markets for the purpose of mosquito control pursuant to 6 V.S.A. chapter 85.

(c) The surcharges collected under subsection 3305(b) and subdivisions 3305(c)(3)(A) and (B) of this title shall be credited to the special fund established under subdivision (b)(3) of this section for the purpose of an aquatic nuisance control grant program pursuant to ~~sections 921, 922, and 923~~ chapter 50 of Title 10.

Sec. 8. AGENCY OF NATURAL RESOURCES EDUCATIONAL
MATERIALS

Educational materials prepared by the agency of natural resources after July 1, 2009 regarding water pollution, use of state waters, hunting, or fishing shall include information regarding the environmental harm caused by aquatic nuisance species and how the spread of such species may be controlled when boaters and other users of state waters follow specific steps to clean boats, trailers, and other equipment after use in state waters.

Sec. 9. DEPARTMENT OF TOURISM AND MARKETING

All brochures prepared by the department of tourism and marketing after July 1, 2009 that address or relate to the use of state surface waters shall include information regarding the environmental harm caused by aquatic nuisance species and how the spread of such species may be controlled when boaters and other users of state waters follow specific steps to clean boats, trailers, and other equipment after use in state waters.

Sec. 10. AGENCY OF NATURAL RESOURCES REPORT ON
FINANCING OF AQUATIC NUISANCE CONTROL

On or before January 15, 2010, the agency of natural resources shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy regarding the funding of aquatic nuisance control activities in the state. The report shall include:

(1) A summary of the existing funding available for aquatic nuisance control activities in the state;

(2) A summary of the demand for aquatic nuisance control activities and the demand for funds to finance such activities;

(3) Recommended user fees, permit fees, or other financial mechanisms that could be utilized to fund the demand for aquatic nuisance control activities in the state.

Sec. 11. EFFECTIVE DATE

(a) This section and Secs. 8 (ANR materials), 9 (department of tourism and marketing materials), and 10 (ANR report on financing aquatic nuisance control) of this act shall take effect July 1, 2009.

(b) Secs. 1 (ANR aquatic nuisance control chapter), 2 (ANR enforcement), 3 (ANR appeals), 4 (repeal of existing aquatic nuisance control authority), 5 (agency of transportation aquatic nuisance educational materials), 6 (boating safety rules educational materials) and 7 (special fund for motor vehicle registration) of this act shall take effect July 1, 2010.