

S.75

An act relating to aquatic nuisance species control

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

Sec. 1. 10 V.S.A. § 1452 is amended to read:

§ 1452. DEFINITIONS

As used in this chapter:

(1) “Agency” means the ~~agency of natural resources~~ 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, including rooted aquatic plants and animal and algal populations. Aquatic nuisances include ~~rooted aquatic plants and animal and algal populations~~ zebra mussels (*Dreissena polymorpha*), quagga mussels (*Dreissena bugensis*), Asian clam (*Corbicula fluminea*), fishhook waterflea (*Cercopagis pengoi*), rusty crayfish (*Orconectes rusticus*), spiny waterflea (*Bythotrephes longimanus*), or other species identified by the Secretary by rule.

(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~~ means multi-cellular organisms.

(5) ~~“Board” means the water resources panel of the natural resources board.~~ [Repealed.]

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(9) ~~“Secretary” means the secretary of natural resources~~ 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 that are contained within, flow through, or border upon the state State or any portion of it.~~

(12) “Baitbox” means a receptacle, not exceeding 25 cubic feet in volume, used for holding or keeping baitfish alive for personal use.

(13) “Live well” means a well for keeping fish alive in a vessel by allowing water to circulate through the well.

(14) “Ballast tank” means any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(15) “Bilge area” means the area in a vessel below a height of four inches measured from the lowest point in the vessel where water can collect when the vessel is in its static floating position.

(16) “Decontaminate” means a process used to kill, destroy, or remove aquatic nuisance species and other organic material that may be present in or on a vessel, motor vehicle transporting the vessel, trailer, or other equipment. Decontamination may include washing a vessel, motor vehicle transporting the vessel, trailer, or other equipment with water at a sufficient temperature to kill or remove aquatic nuisance species.

(17) “Lake association” means a lake protection organization registered with the Secretary of Natural Resources on a form provided by the Secretary.

(18) “Marina” means a property, other than a public access or landing area regulated under section 4145 of this title, on the shoreline of a water of the State that contains a dock, basin, or ramp that, at no cost or for remuneration, provides to the public secure moorings or access to the water.

(19) “Motor vehicle” means any vehicle propelled or drawn by power other than muscular power, including a snowmobile, motorcycle, all-terrain vehicle, farm tractor, or tracked vehicle.

(20) “Personal watercraft” shall have the same meaning as set forth in 23 V.S.A. § 3302.

(21) “Transport” means to move motor vehicles, vessels, personal watercraft, seaplanes, trailers, and other equipment over land, but does not include movement within the immediate area required for loading and

preparing vehicles, vessels, personal watercraft, seaplanes, trailers, and other equipment prior to movement into or away from a body of water.

(22) "Vessel" means every description of watercraft used or capable of being used as a means of transportation on water, including personal watercraft.

Sec. 2. 10 V.S.A. § 1454 is amended to read:

§ 1454. TRANSPORT OF AQUATIC PLANTS AND AQUATIC
NUISANCE SPECIES

(a) ~~No~~ Transport of aquatic nuisance species; prohibition. A person shall ~~not~~ 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~~ water. This section shall not restrict:

(1) 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; or

(2) proper collection of water samples for the purpose of water quality monitoring.

(b) Inspection of vessel entering or leaving water. A person transporting a vessel to or from a water shall, prior to launching the vessel and upon leaving a

water, inspect the vessel, the motor vehicle transporting the vessel, the trailer, and other equipment, and shall remove any aquatic plants, aquatic plant parts, and aquatic nuisance species.

(c) Aquatic nuisance species inspection station. A person transporting a vessel to or from a water shall, prior to launching the vessel and upon leaving a water, have the vessel, the motor vehicle transporting the vessel, the trailer, and other equipment inspected and decontaminated at an approved aquatic nuisance species inspection station if:

(1) an aquatic nuisance species inspection station is maintained at the area where the vessel is entering or leaving the water;

(2) the aquatic nuisance species inspection station is open; and

(3) an individual operating the aquatic nuisance species inspection station identifies the vessel for inspection or decontamination.

(d) Draining of vessel; transport.

(1) When leaving a water of the State and prior to transport away from the area where the vessel left the water, a person operating a vessel shall drain the vessel, vehicle transporting the vessel, trailer, and other equipment of water, including water in live wells, ballast tanks, and bilge areas. A person is not required to drain baitboxes or vehicles and trailers specifically designed and used for water hauling. A person operating a vessel shall drain the vessel, vehicle transporting the vessel, trailer, and other equipment of water in a

manner to avoid a discharge to the water of the State. This subdivision does not authorize a person to discharge waste, as defined in section 1251 of this title, to waters of the State. A person shall dispose of waste in the manner required by law.

(2) When a person transports a vessel, the person shall remove or open the drain plugs, bailers, valves, and other devices that are used to control the draining of water from ballast tanks, bilge areas, and live wells of the vessel, vehicle transporting the vessel, trailer, and other equipment, except for vehicles and trailers specifically designed and used for water hauling and emergency response vehicles and equipment.

(e) Exceptions to transport prohibition. The Secretary may grant exceptions to persons to allow the transport of aquatic plants, zebra mussels, quagga mussels, aquatic plant parts, or other aquatic nuisance species for scientific or purposes, educational purposes, or other purposes specifically authorized by the Secretary. When granting exceptions allowing the transport of aquatic plants, aquatic plant parts, or aquatic nuisance species under this subsection, 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.

~~(e)~~(f) Signage; access areas and marinas. Signage shall be posted at all public access and landing areas regulated under section 4145 of this title and at all marinas regarding the requirements of subsections (a)-(d) of this section relating to aquatic nuisance transport and inspection and decontamination of vessels, motor vehicles transporting vessels, trailers, or other equipment. The Secretary shall provide marinas with the signs required under this section.

(g) Violations. Pursuant to 4 V.S.A. § 1102, a violation of this section may be brought in the Judicial Bureau by any law enforcement officer, as that term is defined in 23 V.S.A. § 3302(2), or, pursuant to section 8007 or 8008 of this title, a violation of this section may be brought in the Environmental Division of the Superior Court. When a violation is brought by an enforcement officer other than an environmental enforcement officer employed by the Agency of Natural Resources, the enforcement officer shall submit to the Secretary a copy of the citation for purposes of compliance with the public participation requirements of section 8020 of this title. If a violation is brought in one body, the same violation shall not be brought in the other body.

Sec. 3. 10 V.S.A. § 1455 is amended to read:

§ 1455. AQUATIC NUISANCE CONTROL PERMIT

(a) ~~No~~ A person may shall not 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~~ 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~~ that 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, there is 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.

* * *

- (i) An aquatic nuisance control permit issued under this section shall:
- (1) ~~specify~~ Specify in writing the Secretary's findings under subsection (d) or (f) of this section;
 - (2) ~~specify~~ Specify the location, manner, nature, and frequency of the permitted activity;
 - (3) ~~contain~~ 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~~ Conditions may include requirements concerning recording, reporting, and monitoring;

(4) ~~be~~ Be valid for the period of time specified in the permit, not to exceed five 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.

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(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(a)(5); and

(2) [Repealed.]

(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.

(n) The Secretary shall not require a permit under this section for the use of up to 15 bottom barriers on an inland lake to control aquatic nuisance species, provided that:

(1) the bottom barriers are managed and controlled by a lake association;

(2) each bottom barrier shall be of no greater size than 14 feet by 14 feet;

(3) the bottom barriers are not installed: in an area where they create a hazard to public health; or in area where they unreasonably impede boating or navigation;

(4) the lake association notifies the Secretary of the use of the barriers within three days of placement in a water; and

(5) the Secretary may require the removal of the bottom barriers upon a determination that the barriers pose a threat to a threatened or endangered species.

Sec. 4. 10 V.S.A. § 1461 is added to read:

§ 1461. AQUATIC NUISANCE INSPECTION STATIONS; TRAINING
PROGRAM

(a) The Secretary of Natural Resources shall establish a training program regarding how to conduct inspection of vessels, motor vehicles, trailers, and other equipment for the presence of aquatic plants, aquatic plant parts, and aquatic nuisance species. The training program shall include online training, recorded material, training manuals, or other material that allows a person to complete training remotely.

(b) The Secretary of Natural Resources shall establish a training program regarding how to decontaminate vessels, motor vehicles, trailers, and other equipment to prevent the spread of aquatic plants, aquatic plant parts, and aquatic nuisance species.

(c) In order to establish an aquatic nuisance species inspection station for the purposes of the vessel inspection and decontamination requirements of subsection 1454(c) of this title, a lake association, municipality, or the Commissioner of Environmental Conservation shall apply to the Secretary for approval. As a condition of approval, a representative of an lake association or municipality shall complete the training programs established under subsections (a) and (b) of this section. A lake association or municipality seeking to operate an aquatic nuisance species inspection station shall

designate a representative to complete the training programs established under subsections (a) and (b) of this section.

(d) A lake association or municipality approved to operate an aquatic nuisance species inspection station under subsection (b) of this section shall provide persons who will operate the aquatic nuisance species inspection station with training materials furnished by the Secretary regarding how to conduct inspection of vessels, motor vehicles, trailers, and other equipment for the presence of aquatic plants, aquatic plant parts, and aquatic nuisance species.

Sec. 5. 4 V.S.A. § 1102(b) is amended to read:

(b) The Judicial Bureau shall have jurisdiction of the following matters:

* * *

(27) Violations of 10 V.S.A. § 1454(a)-(d) relating to the transport of aquatic plants and aquatic nuisance species.

Sec. 6. 23 V.S.A. § 3317(b) is amended to read:

(b) A person who violates a requirement under 10 V.S.A. § 1454 shall be subject to enforcement under 10 V.S.A. ~~chapter 201~~ § 8007 or 8008 or a fine under this chapter, provided that the person shall be assessed a penalty or fine of not more than \$1,000.00 for each violation. A person who violates a rule adopted under 10 V.S.A. § 1424 shall be subject to enforcement under 10 V.S.A. ~~chapter 201~~, provided that the person shall be assessed a penalty of

not more than \$300.00 for each violation. A person who violates any of the following sections of this title shall be subject to a penalty of not more than \$300.00 for each violation:

§ 3306(e) marine toilet

§ 3312a operation of personal watercraft

Sec. 7. AQUATIC NUISANCE CONTROL GENERAL PERMIT

On or before February 1, 2018, the Secretary of Natural Resources shall issue a general permit for aquatic nuisance control activities. The general permit shall allow for nonchemical aquatic nuisance control activities and any other management or control measures that the Secretary considers appropriate and for which the Secretary has general permit authority under 10 V.S.A. chapter 50. The general permit shall authorize rapid response activities that an individual or lake association may take to control aquatic nuisance species. The provisions of 10 V.S.A. § 1456(a) and (c)–(f) related to the rapid response permits for aquatic nuisance control shall apply to the rapid response activities authorized in the permit required under this section.

Sec. 8. ANR PUBLIC OUTREACH REGARDING AQUATIC NUISANCE SPECIES TRANSPORT AND INSPECTION REQUIREMENTS

Beginning on July 1, 2017, the Secretary of Natural Resources shall provide education and outreach to the public regarding the transport and inspection requirements in 10 V.S.A chapter 50 for the reduction of the spread of aquatic

nuisance species. The education and outreach shall include a notification in the Department of Fish and Wildlife guides to hunting and fishing in Vermont regarding the aquatic nuisance transport prohibition and the requirements to inspect vessels for aquatic nuisance species when entering or leaving a water.

Sec. 9. ANR REPORT; AQUATIC NUISANCE TRANSPORT; LAKE
CHAMPLAIN

(a) On or before November 15, 2017, the Secretary of Natural Resources shall submit to the Senate Committee on Natural Resources and Energy and the House Committee on Natural Resources, Fish and Wildlife a report regarding how to control the transport of aquatic nuisances to and from Lake Champlain. The report shall include:

(1) an inventory of the boat decontamination facilities or other aquatic nuisance control measures currently employed at boat launches, marinas, or other areas on Lake Champlain;

(2) a summary of whether the current measures to control aquatic nuisance transport to and from Lake Champlain are adequate;

(3) a proposal for siting boat decontamination facilities or other comparable aquatic nuisance control measures at boat launches, marinas, or other areas on Lake Champlain, including where proposed facilities or other aquatic nuisance control measures would be located;

(4) a summary of how proposed boat decontamination facilities or comparable aquatic nuisance control measures would be staffed, including whether staff would possess sufficient authority to inspect a vessel entering or leaving Lake Champlain in order to require boat decontamination or another aquatic nuisance control measure;

(5) an estimate of the cost to implement proposed boat decontamination facilities or other aquatic nuisance control measures on Lake Champlain; and

(6) a recommendation of whether and how vessels leaving Lake Champlain should be quarantined from entering other waters of the State for a defined time period or until a specific condition is satisfied;

(7) draft legislation that the Secretary determines is necessary to implement any boat decontamination facility or other aquatic nuisance control measure proposed in the report.

(b) As used in this section, “aquatic nuisance” and “vessel” shall have the same meanings as set forth in 10 V.S.A. § 1452.

Sec. 10. REPEAL

10 V.S.A. § 1455(n) (bottom barriers for aquatic nuisance control) shall be repealed on March 1, 2018.

Sec. 11. EFFECTIVE DATE

This act shall take effect on passage.