

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred
3 Senate Bill No. 75 entitled “An act relating to aquatic nuisance species
4 control” respectfully reports that it has considered the same and recommends
5 that the bill be amended by striking out all after the enacting clause and
6 inserting in lieu thereof the following:

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

8 § 1452. DEFINITIONS

9 As used in this chapter:

10 (1) “Agency” means the ~~agency of natural resources~~ Agency of Natural
11 Resources.

12 (2) “Aquatic nuisance” means undesirable or excessive substances or
13 populations that interfere with the recreational potential or aquatic habitat of a
14 body of water, including rooted aquatic plants and animal and algal
15 populations. Aquatic nuisances include ~~rooted aquatic plants and animal and~~
16 ~~algal populations~~ zebra mussels (Dreissena polymorpha), quagga mussels
17 (Dreissena bugensis), Asian clam (Corbicula fluminea), fishhook waterflea
18 (Cercopagis pengoi), rusty crayfish (Orconectes rusticus), spiny waterflea
19 (Bythotrephes longimanus), or other species identified by the Secretary
20 by rule.

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

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

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6 ~~board.~~ [Repealed.]

7 * * *

8 (9) “Secretary” means the ~~secretary of natural resources~~ Secretary of
9 Natural Resources.

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

12 (11) “Waters” means all rivers, streams, creeks, brooks, reservoirs,
13 ponds, lakes, and springs and all bodies of surface waters, artificial or natural,
14 ~~which~~ that are contained within, flow through, or border upon the ~~state~~ State or
15 any portion of it.

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

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

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

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

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

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

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

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

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

1 (21) “Transport” means to move motor vehicles, vessels, personal
2 watercraft, seaplanes, trailers, and other equipment over land, but does not
3 include movement within the immediate area required for loading and
4 preparing vehicles, vessels, personal watercraft, seaplanes, trailers, and other
5 equipment prior to movement into or away from a body of water.

6 (22) “Vessel” means every description of watercraft used or capable of
7 being used as a means of transportation on water, including personal
8 watercraft.

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

10 § 1454. TRANSPORT OF AQUATIC PLANTS AND AQUATIC
11 NUISANCE SPECIES

12 (a) ~~Not~~ Transport of aquatic nuisance species; prohibition. A person shall
13 not transport an aquatic plant ~~or~~, aquatic plant part, ~~zebra mussels (Dreissena~~
14 ~~polymorpha), quagga mussels (Dreissena bugensis), or other~~ aquatic nuisance
15 species ~~identified by the Secretary by rule to or from any Vermont waters on~~
16 ~~the outside of a vehicle, boat, personal watercraft, trailer, or other equipment~~
17 water. This section shall not restrict:

18 (1) proper harvesting or other control activities undertaken for the
19 purpose of eliminating or controlling the growth or propagation of aquatic
20 plants, ~~zebra mussels, quagga mussels, or other~~ aquatic nuisance species; or

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

3 (b) Inspection of vessel entering or leaving water. A person transporting a
4 vessel to or from a water shall, prior to launching the vessel and upon leaving a
5 water, inspect the vessel, the motor vehicle transporting the vessel, the trailer,
6 and other equipment, and shall remove any aquatic plants, aquatic plant parts,
7 and aquatic nuisance species.

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

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

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

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

17 (d) Draining of vessel; transport.

18 (1) When leaving a water of the State and prior to transport away from
19 the area where the vessel left the water, a person operating a vessel shall drain
20 the vessel, vehicle transporting the vessel, trailer, and other equipment of
21 water, including water in live wells, ballast tanks, and bilge areas. A person is

1 not required to drain baitboxes or vehicles and trailers specifically designed
2 and used for water hauling. A person operating a vessel shall drain the vessel,
3 vehicle transporting the vessel, trailer, and other equipment of water in a
4 manner to avoid a discharge to the water of the State. This subdivision does
5 not authorize a person to discharge waste, as defined in section 1251 of this
6 title, to waters of the State. A person shall dispose of waste in the manner
7 required by law.

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

14 (e) Exceptions to transport prohibition. The Secretary may ~~grant~~
15 ~~exceptions to persons to~~ allow the transport of aquatic plants, ~~zebra mussels,~~
16 ~~quagga mussels,~~ aquatic plant parts, or other aquatic nuisance species for
17 scientific or purposes, educational purposes, or other purposes specifically
18 authorized by the Secretary. When ~~granting exceptions~~ allowing the transport
19 of aquatic plants, aquatic plant parts, or aquatic nuisance species under this
20 subsection, the Secretary shall take into consideration both the value of the
21 scientific or educational purpose and the risk to Vermont surface waters posed

1 by the transport and ultimate use of the specimens. A letter from the Secretary
2 authorizing the transport must accompany the specimens during transport.

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

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

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

2 § 1455. AQUATIC NUISANCE CONTROL PERMIT

3 (a) ~~No~~ A person ~~may~~ shall not use pesticides, chemicals other than
4 pesticides, biological controls, bottom barriers, structural barriers, structural
5 controls, or powered mechanical devices in waters of the State to control
6 nuisance aquatic plants, insects, or other aquatic nuisances, including lamprey,
7 unless that person has been issued a permit by the ~~secretary~~ Secretary.

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

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

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

16 (1) there is no reasonable nonchemical alternative available;

17 (2) there is acceptable risk to the nontarget environment;

18 (3) there is negligible risk to public health;

19 (4) a long-range management plan has been developed ~~which~~ that

20 incorporates a schedule of pesticide minimization; and

1 (5) there is a public benefit to be achieved from the application of a
2 pesticide or, in the case of a pond located entirely on a landowner's property,
3 there is no undue adverse effect upon the public good.

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

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

11 (1) there is acceptable risk to the nontarget environment;

12 (2) there is negligible risk to public health; and

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

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

20 * * *

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

1 (1) ~~specify~~ Specify in writing the Secretary's findings under subsection
2 (d) or (f) of this section;

3 (2) ~~specify~~ Specify the location, manner, nature, and frequency of the
4 permitted activity;

5 (3) ~~contain~~ Contain additional conditions, requirements, and restrictions
6 as the Secretary deems necessary to preserve and protect the quality of the
7 receiving waters, to protect the public health, and to minimize the impact on
8 the nontarget environment. ~~Such conditions~~ Conditions may include
9 requirements concerning recording, reporting, and monitoring;

10 (4) ~~be~~ Be valid for the period of time specified in the permit, not to
11 exceed five years for chemical control, and not to exceed ten years for
12 nonchemical control.

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

16 * * *

17 (l) No permit shall be required under this section for mosquito control
18 activities that are regulated by the Agency of Agriculture, Food and Markets,
19 provided that:

20 (1) Prior to authorizing the use of larvicides or pupicides in waters of
21 the State, the Secretary of Agriculture, Food and Markets shall designate

1 acceptable control products and methods for their use and issue permits
2 pursuant to 6 V.S.A. § 1083(a)(5); and

3 (2) [Repealed.]

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

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

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

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

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

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

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

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

5 § 1461. AQUATIC NUISANCE INSPECTION TRAINING PROGRAM

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

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

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

1 aquatic nuisance species inspection station shall designate a representative to
2 complete the training programs established under subsections (a) and (b) of
3 this section.

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

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

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

12 * * *

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

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

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

1 more than \$300.00 for each violation. A person who violates any of the
2 following sections of this title shall be subject to a penalty of not more than
3 \$300.00 for each violation:

4 § 3306(e) marine toilet

5 § 3312a operation of personal watercraft

6 Sec. 7. AQUATIC NUISANCE CONTROL GENERAL PERMIT

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

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

19 Beginning on July 1, 2018, the Secretary of Natural Resources shall provide
20 education and outreach to the public regarding the transport and inspection
21 requirements in 10 V.S.A chapter 50 for the reduction of the spread of aquatic

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

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

6 CHAMPLAIN

7 (a) On or before November 15, 2018, the Secretary of Natural Resources
8 shall submit to the Senate Committee on Natural Resources and Energy and
9 the House Committee on Natural Resources, Fish and Wildlife a report
10 regarding how to control the transport of aquatic nuisances to and from Lake
11 Champlain. The report shall include:

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

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

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

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

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

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

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

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

16 Sec. 10. REPEAL

17 10 V.S.A. § 1455(n) (bottom barriers for aquatic nuisance control) shall be
18 repealed on March 1, 2018.

19 Sec. 11. EFFECTIVE DATE

20 This act shall take effect on July 1, 2017.

21

1

2 (Committee vote: _____)

3

4

Senator _____

5

FOR THE COMMITTEE