

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6 ~~board.~~ [Repealed.]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 (17) “Lake association” means a lake protection organization registered
8 with the Secretary of Natural Resources on a form provided by the Secretary.

9 (18) “Marina” means a property on the shoreline of a water of the State
10 that contains a dock or basin that, at no cost or for remuneration, provides
11 secure moorings on the water or provides access to the water.

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

15 (20) “Personal watercraft” shall have the same meaning as set forth in
16 23 V.S.A. § 3302.

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

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

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

5 § 1454. TRANSPORT OF AQUATIC PLANTS AND AQUATIC
6 NUISANCE SPECIES

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

13 (1) proper harvesting or other control activities undertaken for the
14 purpose of eliminating or controlling the growth or propagation of aquatic
15 plants, zebra mussels, quagga mussels, or other aquatic nuisance species; or

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

18 (b) Inspection of vessel entering or leaving water. A person transporting a
19 vessel to or from a water shall, prior to launching the vessel and upon leaving a
20 water, inspect the vessel, the motor vehicle transporting the vessel, the trailer,

1 and other equipment, and shall remove any aquatic plants, aquatic plant parts,
2 and aquatic nuisance species.

3 (c) Aquatic nuisance species inspection station. A person transporting a
4 vessel to a water shall, prior to launching the vessel, have the vessel, the motor
5 vehicle transporting the vessel, the trailer, and other equipment inspected and,
6 if necessary, decontaminated at an authorized aquatic nuisance species
7 inspection station if:

8 (1) an aquatic nuisance species inspection station is maintained at the
9 access area;

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

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

13 (d) Draining of vessel; transport.

14 (1) When leaving a water of the State and prior to transport away from
15 the area where the vessel left the water, a person operating a vessel shall drain
16 the vessel, vehicle transporting the vessel, trailer, and other equipment of
17 water, including water in live wells, ballast tanks, and bilge areas. A person is
18 not required to drain baitboxes or vehicles and trailers specifically designed
19 and used for water hauling. A person operating a vessel shall drain the vessel,
20 vehicle transporting the vessel, trailer, and other equipment of water in a
21 manner to avoid a discharge to the water of the State. This subdivision does

1 not authorize a person to discharge waste, as defined in section 1251 of this
2 title, to waters of the State. A person shall dispose of waste in the manner
3 required by law.

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

10 (e) Exceptions to transport prohibition. The Secretary may ~~grant~~
11 ~~exceptions to persons to~~ allow the transport of aquatic plants, ~~zebra mussels,~~
12 ~~quagga mussels,~~ aquatic plant parts, or ~~other~~ aquatic nuisance species for
13 scientific ~~or~~ purposes, educational purposes, or other purposes specifically
14 authorized by the Secretary. When ~~granting exceptions~~ allowing the transport
15 of aquatic plants, aquatic plant parts, or aquatic nuisance species under this
16 subsection, the Secretary shall take into consideration both the value of the
17 scientific or educational purpose and the risk to Vermont surface waters posed
18 by the transport and ultimate use of the specimens. A letter from the Secretary
19 authorizing the transport must accompany the specimens during transport.

20 ~~(e)~~ (f) Signage marina. A person operating a marina shall post signage at
21 the marina regarding the requirements of subsections (a)-(d) of this section

1 relating to aquatic nuisance transport and inspection and decontamination of
2 vessels, motor vehicles transporting vessels, and trailers. The Secretary shall
3 develop a model sign that a marina may use to satisfy the posting requirement
4 of this section.

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

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

16 § 1455. AQUATIC NUISANCE CONTROL PERMIT

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

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

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

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

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

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

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

12 (4) a long-range management plan has been developed ~~which~~ that
13 incorporates a schedule of pesticide minimization; and

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

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

20 (f) The Secretary shall issue a permit for the control of aquatic nuisances
21 by biological controls, bottom barriers, structural barriers, structural controls,

1 powered mechanical devices, or chemicals other than pesticides when the

2 Secretary finds:

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

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

5 (3) there is either benefit to or no undue adverse effect upon the

6 public good.

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

12 * * *

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

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

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

18 (3) ~~contain~~ Contain additional conditions, requirements, and restrictions
19 as the Secretary deems necessary to preserve and protect the quality of the
20 receiving waters, to protect the public health, and to minimize the impact on

1 the nontarget environment. ~~Such conditions~~ Conditions may include
2 requirements concerning recording, reporting, and monitoring;

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

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

9 * * *

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

13 (1) Prior to authorizing the use of larvicides or pupicides in waters of
14 the State, the Secretary of Agriculture, Food and Markets shall designate
15 acceptable control products and methods for their use and issue permits
16 pursuant to 6 V.S.A. § 1083(a)(5); and

17 (2) [Repealed.]

18 (m) The Secretary may issue general permits for the use of nonchemical
19 aquatic nuisance control activities, provided that the Secretary makes the
20 findings required in subsection (f) of this section. A general permit issued

1 under this subsection is not required to specify the exact location or the
2 frequency of the permitted activity.

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

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

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

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

12 (4) the lake association notifies the Secretary of the use of the barriers
13 within 14 days of placement in a water.

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

15 § 1461. AQUATIC NUISANCE INSPECTION TRAINING PROGRAM

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

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

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

4 (b) A person who violates a requirement under 10 V.S.A. § 1454 shall be
5 subject to enforcement under 10 V.S.A. ~~chapter 201~~ § 8007 or 8008 or a fine
6 under this chapter, provided that the person shall be assessed a penalty or fine
7 of not more than \$1,000.00 for each violation. A person who violates a rule
8 adopted under 10 V.S.A. § 1424 shall be subject to enforcement under 10
9 V.S.A. chapter 201, provided that the person shall be assessed a penalty of not
10 more than \$300.00 for each violation. A person who violates any of the
11 following sections of this title shall be subject to a penalty of not more than
12 \$300.00 for each violation:

13 § 3306(e) marine toilet

14 § 3312a operation of personal watercraft

15 Sec. 7. AQUATIC NUISANCE CONTROL GENERAL PERMIT

16 On or before February 1, 2018, the Secretary of Natural Resources shall
17 issue a general permit for aquatic nuisance control activities. The general
18 permit shall allow for nonchemical aquatic nuisance control activities and any
19 other management or control measures that the Secretary considers appropriate
20 and for which the Secretary has general permit authority under 10 V.S.A.
21 chapter 50. The general permit shall authorize rapid response activities that an

1 individual or lake association may take to control aquatic nuisance species.

2 The provisions of 10 V.S.A. § .1456(a) and (c)-(f) related to the rapid response
3 permits for aquatic nuisance control shall apply to the rapid response activities
4 authorized in the permit required under this section.

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

7 Beginning on July 1, 2018, the Secretary of Natural Resources shall provide
8 education and outreach to the public regarding the transport and inspection
9 requirements in 10 V.S.A chapter 50 for the reduction of the spread of aquatic
10 nuisance species. The education and outreach shall include:

11 (1) signage posted at public access areas sites regarding the aquatic
12 nuisance transport prohibition and the requirements to inspect vessels for
13 aquatic nuisance species when entering or leaving a water;

14 (2) a notification in the Department of Fish and Wildlife guides to
15 hunting and fishing in Vermont regarding the aquatic nuisance transport
16 prohibition and the requirements to inspect vessels for aquatic nuisance species
17 when entering or leaving a water.

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

20 (a) On or before December 1, 2018, the Secretary of Natural Resources
21 shall submit to the Senate Committee on Natural Resources and Energy and

1 the House Committee on Natural Resources, Fish and Wildlife a report
2 regarding how to control the transport of aquatic nuisances to and from Lake
3 Champlain. The report shall include:

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

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

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

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

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

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

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

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

9 Sec. 10. REPEAL

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

12 Sec. 11. EFFECTIVE DATE

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

14

15

16 (Committee vote: _____)

17

18

Senator _____

19

FOR THE COMMITTEE