

AMENDED IN ASSEMBLY MAY 4, 2009

AMENDED IN ASSEMBLY APRIL 16, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 804

Introduced by Assembly Member Hall

February 26, 2009

An act to amend Section 2301 of, and to add Section 2303 to, the Fish and Game Code, relating to invasive aquatic species.

LEGISLATIVE COUNSEL'S DIGEST

AB 804, as amended, Hall. Invasive aquatic species: mussels.

Existing law, until January 1, 2012, generally prohibits a person from possessing, importing, shipping, or transporting in the state, or from placing, planting, or causing to be placed or planted in any water within the state, dreissenid mussels, and authorizes the Director of Fish and Game or his or her designee to engage in various enforcement activities. Existing law exempts a public or private agency that operates a water supply system from those enforcement activities, if the operator of the facilities has prepared and implemented a prescribed plan to control or eradicate dreissenid mussels.

Existing law provides that a person who violates or resists, delays, obstructs, or interferes with the implementation of these provisions is subject to a penalty, in an amount not to exceed \$1,000, that is imposed administratively by the department.

This bill would provide that an operator of water delivery and storage facilities, who has prepared, *initiated*, and ~~implemented~~ *is in compliance with* a plan to control and eradicate dreissenid mussels in accordance with the above existing provisions of law, would not be subject to any

civil or criminal liability for the introduction of dreissenid mussel species as a result of operations of those facilities. The bill would provide that *neither the director's enforcement activities, nor* the prohibition on a person possessing, importing, shipping, or transporting dreissenid mussels in the state ~~do not~~ *would* apply to an operator who has prepared, *initiated, and is in compliance with* a plan to control and eradicate dreissenid mussels, unless the department had required the operator to update its plan and the operator failed to do so.

This bill would require the Department of Fish and Game, in conjunction with the Department of Water Resources, to conduct a study on quagga mussels. This bill would provide that the study is to consider the financial and resource-based impacts incurred by California water agencies in implementing control and eradication efforts related to quagga mussels, and measure the success of available and potential measures and programs dealing with invasive mussels. The departments would be required to submit a report to the Legislature by June 30, 2010.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Quagga mussels, related to zebra mussels in the genus
- 4 Dreissena, are native to the Black and Caspian Seas of Eastern
- 5 Europe.
- 6 (b) Both zebra and quagga mussels appeared in the Great Lakes
- 7 of the United States in the late 1980s, apparently brought to this
- 8 country in the ballast water of transoceanic ships.
- 9 (c) Quagga mussels can reproduce quickly. Up to forty thousand
- 10 (40,000) quagga mussels can colonize within one square meter.
- 11 The mussels damage water supply infrastructure by clogging pipes
- 12 and pumping equipment. In addition, the mussels outcompete other
- 13 species for food and with their large numbers can overwhelm native
- 14 ecosystems.
- 15 (d) While California mandates that water system operators
- 16 manage their reservoirs and delivery systems to prevent and control
- 17 mussel infestations, complete eradication of quagga mussels in

1 any infested large water body is unlikely. Eradication efforts in
2 the American Midwest have failed.

3 (e) Given that eradication from large water bodies is physically
4 impossible and that water delivery systems are essential to maintain
5 public health and safety, the Legislature finds that implementation
6 of the available measures to control mussel infestations and prevent
7 the spread of the mussels to new water bodies is the most that can
8 reasonably be required of water supply agencies.

9 (f) Compliance with current legal requirements for mussel
10 monitoring and management plans in water supply systems are
11 sufficient to protect agencies from unlimited liability for dealing
12 with the consequences of this invasive species.

13 SEC. 2. Section 2301 of the Fish and Game Code is amended
14 to read:

15 2301. (a) (1) Except as authorized by the department, a person
16 shall not possess, import, ship, or transport in the state, or place,
17 plant, or cause to be placed or planted in any water within the state,
18 dreissenid mussels.

19 (2) The director or his or her designee may do all of the
20 following:

21 (A) Conduct inspections of conveyances, which include vehicles,
22 boats and other watercraft, containers, and trailers, that may carry
23 or contain adult or larval dreissenid mussels. Included as part of
24 this authority to conduct inspections is the authority to temporarily
25 stop conveyances that may carry or contain adult or larval
26 dreissenid mussels on any roadway or waterway in order to conduct
27 inspections.

28 (B) Order that areas in a conveyance that contain water be
29 drained, dried, or decontaminated pursuant to procedures approved
30 by the department.

31 (C) Impound or quarantine conveyances in locations designated
32 by the department for up to five days or the period of time
33 necessary to ensure that dreissenid mussels can no longer live on
34 or in the conveyance.

35 (D) (i) Conduct inspections of waters of the state and facilities
36 located within waters of the state that may contain dreissenid
37 mussels. If dreissenid mussels are detected or may be present, the
38 director or his or her designee may order the affected waters or
39 facilities closed to conveyances or otherwise restrict access to the
40 affected waters or facilities, and shall order that conveyances

1 removed from, or introduced to, the affected waters or facilities
2 be inspected, quarantined, or disinfected in a manner and for a
3 duration necessary to detect and prevent the spread of dreissenid
4 mussels within the state.

5 (ii) For the purpose of implementing clause (i), the director or
6 his or her designee shall order the closure or quarantine of, or
7 restrict access to, these waters, areas, or facilities in a manner and
8 duration necessary to detect and prevent the spread of dreissenid
9 mussels within the state. No closure, quarantine, or restriction shall
10 be authorized by the director or his or her designee without the
11 concurrence of the Secretary of the Resources Agency. If a closure
12 lasts longer than seven days, the department shall update the
13 operator of the affected facility every 10 days on efforts to address
14 the dreissenid infestation. The department shall provide these
15 updates in writing and also post these updates on the department's
16 Internet Web site in an easily accessible manner.

17 (iii) The department shall develop procedures to ensure proper
18 notification of affected local and federal agencies, and, as
19 appropriate, the Department of Boating and Waterways, the
20 Department of Water Resources, the Department of Parks and
21 Recreation, and the State Lands Commission in the event of a
22 decision to close, quarantine, or restrict a facility pursuant to this
23 paragraph. These procedures shall include the reasons for the
24 closure, quarantine, or restriction, and methods for providing
25 updated information to those affected. These procedures shall also
26 include protocols for the posting of the notifications on the
27 department's Internet Web site required by clause (ii).

28 (iv) When deciding the scope, duration, level, and type of
29 restrictions, and specific location of a closure or quarantine, the
30 director shall consult with the agency, entity, owner, or operator
31 with jurisdiction, control, or management responsibility over the
32 marina, boat launch facility, or other facility, in order to focus the
33 closure or quarantine to specific areas and facilities so as to avoid
34 or minimize disruption of economic or recreational activity in the
35 vicinity.

36 (b) (1) Upon a determination by the director that it would further
37 the purposes of this section, other state agencies, including, but
38 not limited to, the Department of Parks and Recreation, the
39 Department of Water Resources, the Department of Food and

1 Agriculture, and the State Lands Commission, may exercise the
2 authority granted to the department in subdivision (a).

3 (2) A determination made pursuant to paragraph (1) shall be in
4 writing and shall remain in effect until withdrawn, in writing, by
5 the director.

6 (c) (1) Except as provided in paragraph (2), Division 13
7 (commencing with Section 21000) of the Public Resources Code
8 does not apply to the implementation of this section.

9 (2) An action undertaken pursuant to subparagraph (B) of
10 paragraph (2) of subdivision (a) involving the use of chemicals
11 other than salt or hot water to decontaminate a conveyance or a
12 facility is subject to Division 13 (commencing with Section 21000)
13 of the Public Resources Code.

14 (d) (1) A public or private agency that operates a water supply
15 system shall cooperate with the department to implement measures
16 to avoid infestation by dreissenid mussels and to control or
17 eradicate any infestation that may occur in a water supply system.
18 If dreissenid mussels are detected, the operator of the water supply
19 system, in cooperation with the department, shall prepare and
20 implement a plan to control or eradicate dreissenid mussels within
21 the system. The approved plan shall contain the following
22 minimum elements:

23 (A) Methods for delineation of infestation, including both adult
24 mussels and veligers.

25 (B) Methods for control or eradication of adult mussels and
26 decontamination of water containing larval mussels.

27 (C) A systematic monitoring program to determine any changes
28 in conditions.

29 (D) The requirement that the operator of the water supply system
30 cooperate with the department to update or revise control or
31 eradication measures in the approved plan to address scientific
32 advances in the methods of controlling or eradicating mussels and
33 veligers.

34 (2) If the operator of water delivery and storage facilities for
35 public water supply purposes has prepared ~~and implemented a~~
36 ~~plan, initiated, and is in compliance with all the elements of an~~
37 ~~approved plan~~ to control or eradicate dreissenid mussels in
38 accordance with paragraph (1), the requirements of paragraph (1)
39 of subdivision (a) do not apply to the operation of those water
40 delivery and storage facilities, and the operator is not subject to

1 any civil or criminal liability for the introduction of dreissenid
2 mussel species as a result of those operations. The department may
3 require the operator of a facility to update its plan, and if the plan
4 is not updated or revised as described in subparagraph (D) of
5 paragraph (1), subdivision (a) shall apply to the operation of the
6 water delivery and storage facilities covered by the plan until the
7 operator updates or revises the plan *and initiates and complies*
8 *with all of the elements of the updated or revised plan.*

9 (e) Any entity that discovers dreissenid mussels within this state
10 shall immediately report the discovery to the department.

11 (f) (1) In addition to any other penalty provided by law, any
12 person who violates this section, any verbal or written order or
13 regulation adopted pursuant to this section, or who resists, delays,
14 obstructs, or interferes with the implementation of this section, is
15 subject to a penalty, in an amount not to exceed one thousand
16 dollars (\$1,000), that is imposed administratively by the
17 department.

18 (2) A penalty shall not be imposed pursuant to paragraph (1)
19 unless the department has adopted regulations specifying the
20 amount of the penalty and the procedure for imposing and
21 appealing the penalty.

22 (g) The department may adopt regulations to carry out this
23 section.

24 (h) This section shall remain in effect only until January 1, 2012,
25 and as of that date is repealed, unless a later enacted statute, that
26 is enacted before January 1, 2012, deletes or extends that date.

27 SEC. 3. Section 2303 is added to the Fish and Game Code, to
28 read:

29 2303. (a) The Department of Fish and Game, in conjunction
30 with the Department of Water Resources, shall conduct a study
31 on the financial and resource-based impacts incurred by California
32 water agencies for implementing control and eradication efforts
33 related to quagga mussels. The study shall do all of the following:

34 (1) Measure the level of success achievable by available and
35 potential mussel control measures that can reasonably be applied
36 to water supply systems and recreational water bodies.

37 (2) Identify the level of success of monitoring and education
38 programs in preventing the spread of invasive mussels on water
39 craft.

- 1 (3) Determine the methods by which quagga mussels move
- 2 between water bodies and proliferate within water bodies, and the
- 3 effectiveness of existing monitoring and management measures
- 4 adopted and implemented in accordance with Section 2301.
- 5 (b) The Department of Fish and Game, in conjunction with the
- 6 Department of Water Resources, shall provide a report of its
- 7 findings to the Legislature by June 30, 2010.