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302 CMR: DEPARTMENT OF CONSERVATION AND RECREATION

302 CMR 18.00: AQUATIC NUISANCE CONTROL PROGRAM

Section

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18.01: General Provisions

- (1) Authority. The Department of Conservation and Recreation promulgates 302 CMR 18.00 pursuant to the authority granted by M.G.L. c.21, §§ 37B, 37C, 37D; M.G.L. c.21A, § 10H; and M.G.L. c.90B, § 5D.
- (2) Purpose. 302 CMR 18.00 is intended to protect Massachusetts fresh water systems from Aquatic Nuisance Species by establishing an aquatic nuisance control program with enforceable standards, criteria and procedures that will enable the Department to suppress, eradicate, control and otherwise mitigate or reduce the risk of the spread of Aquatic Nuisance Species.
- (3) Construction.
 - (a) 302 CMR 18.00 shall be liberally construed to permit the Department of Conservation and Recreation to discharge its statutory functions.
 - (b) The Commissioner may, in the public interest, or in an emergency, suspend the application of any section of 302 CMR 18.00. DCR will notify the Department of Fish and Game, if feasible, before any such action is taken; otherwise, DCR will notify the Department of Fish and Game as soon thereafter as practicable. DCR will Post notice of any such suspension.
 - (c) No provision of 302 CMR 18.00 shall make unlawful any act necessarily performed by any officer or employee of the Department of Conservation and Recreation performed in connection with the implementation of these regulations in the line of duty or as part of his or her work duties, or by any person acting as an agent of the Department or its employees. This shall be true for any person or his or her agents engaged in performing the proper and necessary execution of the terms and conditions of any agreement with the Department.

- (d) Nothing in 302 CMR 18.00 shall be construed to or have the effect of limiting the authority of the Division of Fisheries and Wildlife to manage and regulate inland fisheries resources and other wildlife pursuant to G.L. c. 131 or G.L. c. 131A.
- (e) Severability. If any chapter, section, subsection, division or subdivision of 302 CMR 18.00 shall be determined to be invalid, such determination shall apply to the particular chapter, section, subsection, division or subdivision, and all other provisions of 302 CMR 18.00 shall remain valid and in effect.

18.02: Definitions

The following words and phrases, when used in 302 CMR 18.00, shall have the meanings respectively ascribed to them therein except in those instances where the context clearly indicates a different meaning or is otherwise stated.

Whenever any words and phrases used in 302 CMR 18.00 are not defined therein, such word or phrase shall be construed according to its generally accepted meaning as noted in a dictionary of general usage.

Aquatic Nuisance(s) means undesirable or excessive substances or populations that interfere with the recreational or ecological potential of a body of water or interfere with the natural resources thereof. Aquatic Nuisance includes, but is not limited to, rooted aquatic vegetation and algae populations, dreissena mussels, spiny water fleas, and any other invasive species that the Commissioner declares to be an Aquatic Nuisance.

Aquatic Nuisance Species (ANS) means non-native species or non-native Aquatic Nuisances that interfere with or threaten the diversity or abundance of native species, the ecological stability of infested waters, and/or any commercial, agricultural, aquacultural, or recreational activities dependent on such waters. ANS include non-native Aquatic Nuisances and non-native species that may occur within Inland Waters and that presently or potentially threaten ecological processes or natural resources.

Boat Transporter means any vehicle combination including a Low-Boy Boat Transporter, a Stinger-Steered Boat Transporter or a Truck-Trailer Boat Transporter, designed and used specifically for the transport of assembled boats and boat hulls; provided, however, that such boats may be partially disassembled to facilitate transportation.

Clean Boat Certification Program means a program that is established and administered by the Department, sometimes in coordination with OFBA, at certain public access facilities.

Commissioner means the Commissioner of the Department of Conservation and Recreation.

DCR or Department means the Department of Conservation and Recreation.

Inland Water(s) means all waters within the jurisdiction of the Commonwealth other than coastal waters.

Inspection means an activity undertaken by authorized DCR personnel to check any Vessel, vehicle, Boat Transporter, Personal Watercraft, or other equipment that touches the water for the presence of an Aquatic Nuisance Species.

Low-Boy Boat Transporter means a semi-trailer unit, the trailer of which is designed and used specifically for the transport of assembled boats and hulls; provided, however, that the top surface of the deck platform of such semi-trailer shall not be more than 36 inches above the surface on which the wheels of the vehicle rest.

Office of Fishing and Boating Access or OFBA means the office within the Department of Fish and Game.

Personal Watercraft means a Vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by persons sitting, standing or kneeling on the Vessel.

Post or Posting means to display in a place of public view in electronic or printed form, including on the DCR website.

Stinger-Steered Boat Transporter means a Boat Transporter configured as a semitrailer combination on which the fifth wheel is located on a drop frame located behind and below the rear-most axle of the power unit.

Truck-Trailer Boat Transporter means any automobile Boat Transporter combination that typically uses a ball and socket connection, including a Boat Transporter combination consisting of a truck towing a trailer typically using a ball and socket connection with the trailer axle thereon located substantially at the trailer center of gravity, rather than at the rear of the trailer, so as to maintain a downward force on the trailer tongue.

Vessel means as defined in section 1 of M.G.L. c. 90B.

Watercraft means any boat, ship, Vessel, or craft that operates on water, whether moved by oars, paddles, sails or power mechanisms, inboard or outboard, or any other Vessel floating, whether capable of self-locomotion or not, and may include, but is not limited to, house boats, barges, and similar floating objects.

18.03: Prohibited Activities

- (1) No person shall, except as otherwise authorized by the Department, knowingly or intentionally place, or cause to be placed, an ANS in or upon Inland Waters.
- (2) No person shall, except as otherwise authorized by the Department, place or cause to be placed in or upon Inland Waters any Vessel, Boat Transporter, Truck-Trailer Boat Transporter or any other equipment used in conjunction with them that has any plants or animals growing thereon or attached thereto unless such Vessel, Boat Transporter, Truck-Trailer Boat Transporter or any other equipment used in conjunction with them has been

cleaned, decontaminated or treated to remove the plants or animals in accordance with the requirements of 302 CMR 18.04.

- (3) No person shall, except as otherwise authorized by the Department, transport any Vessel, Boat Transporter, Truck-Trailer Boat Transporter or any other equipment used in conjunction with them that has any plants or animals growing thereon or attached thereto.

18.04: Aquatic Nuisance Control Program

(1) Inspections.

(a) DCR may inspect Vessels, Boat Transporters, Personal Watercraft, and other related equipment, including, but not limited to, outboard motors, for the presence of Aquatic Nuisance Species.

(b) No person may refuse an Inspection by DCR on public property.

(2) Decontamination.

(a) Standard Techniques. Each person who owns or operates a Vessel, vehicle, Boat Transporter, Personal Watercraft, or other related equipment must:

1. Immediately upon leaving any Inland Water, remove all plants and animals from the Vessel, motor, boat trailer, anchors, fishing gear and dive gear and dispose of them on dry land, well away from the water, or in a trash can.
2. Dispose of livewell, bait bucket and cooling water away from the shore after each use in Inland Water.
3. Check, clean and dry all gear after each use in Inland Water.

(b) Public Access Facilities. Where a decontamination facility is administered or approved by DCR, in coordination with OFBA, and offered at a public access facility, Vessels, vehicles, Boat Transporters, Personal Watercraft, and other related equipment that utilize such facility ramp shall be decontaminated at the decontamination facility as a condition of their use of the public access facility. Where there is no decontamination facility available or in operation at a public access facility, users of public access facilities shall comply with all other applicable decontamination, certification and Inspection requirements in 302 CMR 18.04(1), 18.04(2).

(c) Clean Boat Certification Program. A determination that an Inland Water body is at high or moderate risk for ANS, including, without limitation, zebra mussels, will be made when the Inland Water body is found to have physical conditions, such as water chemistry, that would allow the establishment of zebra mussels or any other ANS. When the Department makes such a determination, the self-reporting program known as the “Clean Boat Certification Program” applies.

Additionally, the DCR website will include a list of Inland Water bodies where compliance with the Clean Boat Certification Program is required.

1. In addition to, or in lieu of, Inspections and decontamination procedures required for all Vessels, vehicles, Boat Transporters, Personal Watercraft, or other related equipment, users of a water body determined to be at high or moderate risk for specific ANS, or users of a public access facility, shall comply with the Clean Boat Certification Program established for that water body or facility.
2. At each such Inland Water body or facility, the presence of the Clean Boat Certification Program will be posted at or near boat ramps and other authorized entry points to the Inland Water body or facility, and the certification forms required to be completed by users will be provided.
3. Users of designated Inland Water bodies or public access facilities must certify in writing that their Vessels, vehicles, Boat Transporters, Personal Watercraft, or other related equipment have been properly decontaminated. Certification forms should be placed inside the user's vehicle so it can be seen from outside.

18.05: Orders, Quarantines, and Emergencies

- (1) Orders. The Commissioner may issue such orders as he or she deems necessary to aid in the enforcement of 302 CMR 18.00. Such orders may include, but shall not be limited to, orders requiring persons to cease any activity which is in violation of 302 CMR 18.00, or to carry out activities necessary to bring such person into compliance. Orders may be specific to a particular Inland Water body or region, or specific to a particular Aquatic Nuisance Species. DCR will Post its Orders on the DCR website and, if a particular location is affected, at that location.
- (2) Quarantines. Upon a finding that an ANS may interfere with the recreational or ecological potential of a body of water or interfere with the natural resources thereof, the Commissioner, with notice to the Commissioner of the Department of Fish and Game, may issue a temporary or permanent quarantine on the use of such Inland Waters of the Commonwealth. Such a finding will be made after a risk assessment that evaluates factors including, but not limited to, whether an ANS infestation in an Inland Water body is new to the Commonwealth, the risk of spread of the ANS beyond the Inland Water body, the geographic location of the infestation, and anticipated ecological, recreational, and economic impacts of the infestation. DCR will Post notice of its quarantine at the location of the water body and on the Department's website.
- (3) Emergency Authority to Regulate Surface Use. When the Commissioner determines that an Aquatic Nuisance Species has infested an Inland Water body such that the infestation may be made worse or spread by using Vessels on the Inland Water body, the Commissioner, with notice to the Commissioner of the Department of Fish and Game, may issue an emergency order to restrict, restrict access to, or ban any use of any Vessel, or any activity that causes or may cause the spread of Aquatic Nuisance Species, on all or

part of such Inland Water body. Such order may include, but is not limited to, boat ramps, swim beaches, and public access sites. The order must be for a specific period of time. The order may require that any Vessel on the water body be removed at specified locations. The order may further require that those boats, trailers, and equipment be inspected and cleaned by designated boat inspectors upon being taken out of the water at specified locations. DCR will Post notice of its emergency order at the location of the water body and on the Department's website.

18.06: Penalties

- (1) The following violations will subject a person to a fine of not less than \$25 nor more than \$100 for the first violation; by a fine of not less than \$100 nor more than \$500 for a second such violation; and by a fine of not less than \$1,000 or imprisonment in a house of correction for not more than 60 days, or both, for a third or subsequent such violation:
 - (a) Knowingly or intentionally placing, or causing to be placed, an ANS in or upon Inland Waters.
 - (b) Violation of any regulation contained in 302 CMR 18.00.
 - (c) Placing or causing to be placed in or upon Inland Waters any Vessel, Boat Transporter, Truck-Trailer Boat Transporter or any other equipment used in conjunction with them that has any plants or animals growing thereon or attached thereto, unless such Vessel, Boat Transporter, Truck-Trailer Boat Transporter or any other equipment used in conjunction with them has been cleaned, decontaminated or treated to remove the plants or animals in accordance with the requirements of 302 CMR 18.00.
 - (d) Transporting any Vessel, Boat Transporter, Truck-Trailer Boat Transporter or any other equipment used in conjunction with them that has any plants or animals growing thereon or attached thereto.
 - (e) Violating any order or quarantine issued by the Commissioner.
- (2) Any person who knowingly and willfully resists or obstructs the Department from suppressing or eradicating Aquatic Nuisance Species shall be subject to a civil assessment of not more than \$5,000 for each violation; provided, however, that each day such violation occurs or continues shall be deemed a separate violation; provided further, that the penalty may be assessed by the Department and may be recovered in an action brought on behalf of the Commonwealth by the attorney general in the superior court.
- (3) In addition to applicable penalties and assessments, the Department may bring an action for injunctive relief in the superior court relative to any violation noted in 302 CMR 18.06(1) or (2).
- (4) A person notified to appear before the clerk of the district court as provided in M.G.L. c.21A, §10G for a violation of M.G.L. c.21, §37B may so appear within the time specified and pay a fine of \$50.

- (5) The director of the Massachusetts Environmental Police may suspend, revoke, or cancel the certificate of number issued to whoever is convicted of violating M.G.L. c.21, §37B. Such suspension, revocation, or cancellation shall be in addition to the criminal penalties set forth in M.G.L. c.90B, §5D.

18.07: Enforcement

- (1) The authority to enforce aquatic nuisance laws and regulations on Inland Water bodies and boat ramps shall include the director of the Office of Law Enforcement (OLE), deputy directors of OLE, deputy chiefs of OLE, Massachusetts Environmental Police Officers (EPOs), deputy EPOs, Massachusetts State Police, local police officers assigned to harbor patrol, fish and game wardens, city and town police officers assigned to patrol the waters of the Commonwealth, or an officially-appointed harbor master within the municipality's jurisdiction.
- (2) DCR Rangers shall have the authority to enforce the ANS law and regulations on all properties owned or managed by DCR.

18.08: Waiver

- (1) General. The Commissioner may waive any provision or requirement contained in 302 CMR 18.00 not specifically required by law where the Commissioner finds:
 - (a) that strict compliance with such provision or requirement would result in an undue hardship and would not serve to further the intent of M.G.L. c.21, § 37B; M.G.L. c. 21A, § 10H; M.G.L. c. 90B § 5D; and
 - (b) that the waiver is necessary to accommodate an overriding community, regional, or state public interest.
- (2) Filing. All requests for waivers shall:
 - (a) be in writing and mailed to Director of Water Supply Protection, Department of Conservation and Recreation, 251 Causeway Street, Boston, Massachusetts 02114; and
 - (b) contain reference to the specific criteria or provision for which the waiver is requested; and
 - (c) contain all documentation that the waiver applicant seeks to present in support of the waiver.