

AMENDED IN ASSEMBLY APRIL 16, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 804**

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**Introduced by Assembly Member Hall**

February 26, 2009

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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 and implemented 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 the prohibition on a*

*person possessing, importing, shipping, or transporting dreissenid mussels in the state do not apply to an operator who has prepared 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  
18 any infested large water body is unlikely. Eradication efforts in  
19 the American Midwest have failed.  
20 (e) Given that eradication from large water bodies is physically  
21 impossible and that water delivery systems are essential to maintain

1 public health and safety, the Legislature finds that implementation  
2 of the available measures to control mussel infestations and prevent  
3 the spread of the mussels to new water bodies is the most that can  
4 reasonably be required of water supply agencies.

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

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

11 2301. (a) (1) Except as authorized by the department, a person  
12 shall not possess, import, ship, or transport in the state, or place,  
13 plant, or cause to be placed or planted in any water within the state,  
14 dreissenid mussels.

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

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

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

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

31 (D) (i) Conduct inspections of waters of the state and facilities  
32 located within waters of the state that may contain dreissenid  
33 mussels. If dreissenid mussels are detected or may be present, the  
34 director or his or her designee may order the affected waters or  
35 facilities closed to conveyances or otherwise restrict access to the  
36 affected waters or facilities, and shall order that conveyances  
37 removed from, or introduced to, the affected waters or facilities  
38 be inspected, quarantined, or disinfected in a manner and for a  
39 duration necessary to detect and prevent the spread of dreissenid  
40 mussels within the state.

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

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

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

32 (b) (1) Upon a determination by the director that it would further  
33 the purposes of this section, other state agencies, including, but  
34 not limited to, the Department of Parks and Recreation, the  
35 Department of Water Resources, the Department of Food and  
36 Agriculture, and the State Lands Commission, may exercise the  
37 authority granted to the department in subdivision (a).

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

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

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

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

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

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

22 (C) A systematic monitoring program to determine any changes  
23 in conditions.

24 (D) The requirement that the operator of the water supply system  
25 cooperate with the department to update or revise control or  
26 eradication measures in the approved plan to address scientific  
27 advances in the methods of controlling or eradicating mussels and  
28 veligers.

29 (2) If the operator of water delivery and storage facilities for  
30 public water supply purposes has prepared and implemented a plan  
31 to control or eradicate dreissenid mussels in accordance with  
32 paragraph (1), the requirements *of paragraph (1)* of subdivision  
33 (a) do not apply to the operation of those water delivery and storage  
34 facilities, and the operator is not subject to any civil or criminal  
35 liability for the introduction of dreissenid mussel species as a result  
36 of those operations. The department may require the operator of  
37 a facility to update its plan, and if the plan is not updated or revised  
38 as described in subparagraph (D) of paragraph (1), subdivision (a)  
39 shall apply to the operation of the water delivery and storage