



AN ACT CREATING THE MONTANA AQUATIC INVASIVE SPECIES ACT; ESTABLISHING THE INVASIVE SPECIES ACCOUNT; DEFINING DEPARTMENTAL RESPONSIBILITIES; ENCOURAGING COOPERATION AMONG PUBLIC AND PRIVATE ENTITIES; GRANTING RULEMAKING AUTHORITY; AUTHORIZING THE USE OF MANAGEMENT AREAS TO PREVENT THE SPREAD OF AQUATIC INVASIVE SPECIES; PROVIDING FOR THE PREVENTION AND CONTROL OF INFESTATIONS; AUTHORIZING INSPECTION OF THE EXTERIOR OF VESSELS FOR AQUATIC INVASIVE SPECIES; PROHIBITING THE TRANSFER OR TRANSPORT OF AQUATIC INVASIVE SPECIES; PROVIDING EXCEPTIONS; AUTHORIZING EMERGENCY DECLARATIONS; PROVIDING CIVIL AND CRIMINAL PENALTIES; AMENDING SECTIONS 10-3-312, 87-1-506, AND 87-5-721, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, invasive species can wreak damage on the economy, environment, recreational opportunities, and human health; and

WHEREAS, aquatic invasive species, including Eurasian watermilfoil, the quagga mussel, and the zebra mussel, pose new and imminent threats, which if left unchecked could cost millions of dollars not only in damage to Montana waterways, rivers, and lakes, to water storage, delivery, and irrigation systems, to hydroelectric power structures and systems, and to aquatic ecosystems, but also to the entire state economy; and

WHEREAS, the enormous impact caused by the zebra mussel is clearly demonstrated in the eastern United States where the species was first observed in Lake Ontario in 1988 and spread to Lake Michigan and the Finger Lakes Region in New York State by the following year; and

WHEREAS, the United States Geological Survey estimates that \$5 billion has been spent thus far in the Great Lakes Basin alone for damages caused by and control efforts for the zebra mussel; and

WHEREAS, the zebra mussel was first discovered in Lake Mead in January 2007 and has now spread to Lakes Mojave and Havasu and the Colorado River, impacting the states of Arizona, Nevada, and California, as well as to Pueblo Reservoir in Colorado, San Justo Reservoir in California, and Electric Lake in Utah; and

WHEREAS, Eurasian watermilfoil, the zebra mussel, and the quagga mussel are easily carried on vessels used in infested water and then transported to another body of water if the vessel has not been properly

cleaned; and

WHEREAS, Eurasian watermilfoil is already present in Montana and unless Montana takes action now to prevent the infestation of its waters with the zebra mussel and quagga mussel it is only a matter of time before their introduction in this state occurs; and

WHEREAS, the most cost-effective way of dealing with an aquatic invasive species is preventing an infestation from occurring.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [Sections 1 through 14] may be cited as the "Montana Aquatic Invasive Species Act".

Section 2. Legislative findings and purpose. (1) The legislature finds that:

(a) invasive species can wreak damage on the economy, environment, recreational opportunities, and human health in Montana;

(b) there is reason to be concerned about the further introduction, importation, and infestation of Eurasian watermilfoil (*Myriophyllum spicatum*) and the introduction, importation, and infestation of additional invasive species not yet present in Montana, such as the zebra mussel (*Dreissena polymorpha*) and the quagga mussel (*Dreissena bugensis*), that could cause catastrophic damage to not only our waterways, rivers, and lakes, our water storage, delivery, and irrigation systems, our hydroelectric power structures and systems, and our aquatic ecosystems, but also to the entire state economy;

(c) as infestations of threatening invasive species move ever closer to Montana's borders, protecting Montana against these species is of utmost importance to the state economy, environment, recreational opportunities, and human health for the benefit of all Montanans;

(d) preventing the introduction, importation, and infestation of invasive species is the most effective and least costly strategy for combating invasive species that, once established, are often difficult to control or eradicate;

(e) the use of check stations, at which the exterior of vessels may be inspected for the presence of invasive species and cleaned if an invasive species is detected, is an effective way to prevent the introduction,

importation, and infestation of invasive species that are easily transferred from infested areas to uninfested areas when proper precautions are not taken; and

(f) preventing the introduction, importation, and infestation of invasive species is best accomplished through coordinated educational and management activities.

(2) The purpose of [sections 1 through 14] is to establish a mechanism for Montana to take concerted action to detect, control, and manage invasive species, including preventing further introduction, importation, and infestation, by educating the public about the threat of these species, coordinating public and private efforts and expertise to combat these species, and authorizing the use of check stations to prevent the intrastate movement of invasive species from infested areas to uninfested areas to protect the state's economy, environment, recreational opportunities, and human health for the benefit of all Montanans.

Section 3. Definitions. As used in [sections 1 through 14], the following definitions apply:

(1) "Departments" means the department of agriculture and the department of fish, wildlife, and parks.

(2) "Invasive species" means, upon the mutual agreement of the directors of the departments of agriculture and fish, wildlife, and parks, a nonnative, aquatic species that has caused, is causing, or is likely to cause harm to the economy, environment, recreational opportunities, or human health.

(3) "Invasive species management area" means a designation made by a department for a specific area, for a body or bodies of water, or for the entire state for a specific or indeterminate amount of time that regulates invasive species or potential carriers of invasive species within the boundaries of that area.

(4) "Person" means an individual, partnership, corporation, association, limited partnership, limited liability company, governmental subdivision, agency, or public or private organization of any character.

(5) "Vessel" has the meaning provided in 61-1-101.

Section 4. Invasive species account. (1) There is an invasive species account in the state special revenue fund. The account is administered by the department of agriculture.

(2) Money transferred from the general fund or received from any other lawful source, including but not limited to gifts, grants, donations, securities, or other assets, public or private, may be deposited in the account.

(3) Subject to subsection (4), money deposited in the account must be used to accomplish the purposes of [sections 1 through 14].

(4) Any private contribution deposited in the account for a particular purpose, as stated by the donor, must be used exclusively for that purpose.

(5) Any interest and earnings on the account must be retained in the account.

Section 5. Cooperative agreement for invasive species detection and control. (1) In order to implement, administer, and accomplish the purposes of [sections 1 through 14], the departments, collectively or individually, shall enter into a cooperative agreement with each other or may enter into an agreement with any person with the appropriate expertise and administrative capacity to perform the obligations of the agreement.

(2) Prior to entering an agreement with a person other than a department, the departments shall work in collaboration with each other to coordinate their respective responsibilities in order to further the purposes of [sections 1 through 14].

(3) A cooperative agreement may include provisions for funding to implement the agreement.

(4) The overall coordinating authority is the department of agriculture.

Section 6. Departmental responsibilities. (1) The departments shall prepare a list of invasive species and identify those departments and other public agencies with jurisdiction over each species on the list. The jurisdiction of each department for the prevention and control of invasive species is according to the department's powers and duties as established by law.

(2) For those invasive species under the jurisdiction of more than one department, the departments with jurisdiction, through cooperative agreement, shall seek to clarify and coordinate their respective responsibilities.

(3) Working in collaboration with each other, the departments, individually or collectively, shall develop and adopt an invasive species strategic plan or plans to accomplish the purposes of [sections 1 through 14]. The plan or plans shall identify and prioritize threats and determine appropriate actions, in the following order of priority, related to:

(a) public awareness and education;

(b) prevention and detection of invasive species, including the use of invasive species management areas authorized under [section 8];

(c) management, control, and restoration of infested areas; and

(d) emergency response.

(4) The departments shall implement education and outreach programs that increase public knowledge and understanding of prevention, early detection, and control of invasive species.

Section 7. Rulemaking authority. Unless otherwise provided in Title 81, chapters 2 and 7, or this chapter each of the departments may adopt rules for the prevention, early detection, and control of invasive species under the departments' jurisdiction, including rules for the:

- (1) implementation of an invasive species strategic plan;
- (2) transportation of an invasive species or any agent likely to be a carrier of an invasive species;
- (3) designation, regulation, and treatment of an invasive species management area, including rules pertaining to the movement of vessels within, to, or from the area and the inspection and cleaning of the exterior of vessels moving within, to, or from the area; and
- (4) manner in which vessels, including bilges, livewells, bait containers, and other boating-related equipment, traveling in the state must be cleaned to ensure that they are free from the presence of an invasive species.

Section 8. Invasive species management area -- authorization. (1) When an invasive species is identified as infesting or threatening an area, the department with jurisdiction over that invasive species may designate and administer an invasive species management area for a specific area of land, for a body or bodies of water, or for the entire state for a specific or indeterminate amount of time to prevent and control the infestation or spread of that invasive species.

(2) To the extent practicable, prior to the designation of an invasive species management area, the department making the designation shall coordinate with all of the departments in order to further the purposes of [sections 1 through 14].

- (3) The designation of an invasive species management area must specify:
 - (a) the invasive species present or considered threatening; and
 - (b) (i) subject to subsection (3)(b)(ii), the method or methods for preventing the introduction of the species or controlling or eradicating the species, including regulations pertaining to the movement of vessels within, to, and from the area and whether check stations will be used to inspect and clean the exterior of vessels moving within, to, or from the area.

(ii) If the invasive species management area encompasses the entire state, departmental authority to prescribe requirements for cleaning and inspecting the exterior of vessels traveling within the state is limited to those vessels required to stop at a check station pursuant to [section 11(3)(b)].

(4) As far as practical, signs indicating that an invasive species management area is in place must be posted in an effective manner at access points to the designated area and along the boundaries and within the area. The signs must include information about the specific regulations that apply to the area. The signs must be paid for with funds from the invasive species account established in [section 4]. The departments may coordinate with any other governmental entity for the posting of signs.

Section 9. Arrangements with landowners. (1) The department designating an invasive species management area pursuant to [section 8] shall work cooperatively with any affected land managers and landowners within the boundaries of the designated area to establish prevention, treatment, control, and eradication methods best suited for the invasive species infesting or threatening the area.

(2) If negotiations with a land manager or landowner fail, the designating department may arrange for the prevention, treatment, control, and eradication of the designated species as it relates to water infrastructure, including but not limited to hydroelectric, municipal, recreational, and irrigation equipment, without the consent of the land manager or landowner. To the extent possible, the arrangements by the department must be made in a manner best suited to preventing, treating, controlling, and eradicating the invasive species, while minimizing disturbances and adverse impacts to the landowner.

Section 10. Invasive species management area -- regulation. (1) The owner, operator, or person in possession of any vessel authorized for use in an invasive species management area shall comply with any regulations imposed pursuant to [section 8(3)(b)].

(2) After use in a body of water within an invasive species management area, all vessels, bait containers, livewells, bilges, and other boating-related equipment, excluding marine sanitary systems, must be drained in a way that does not impact any state waters before being transported on land or a public highway, as defined in 61-1-101, except where allowed by the department of fish, wildlife, and parks.

(3) In a body of water designated as an invasive species management area, taking from the water or possessing any bait animal, dead or alive, including but not limited to crayfish, leeches, and minnows, is

prohibited unless approved by the department of fish, wildlife, and parks.

Section 11. Check stations. (1) Departments shall establish a check station within or adjacent to an invasive species management area to prevent the introduction, importation, infestation, and spread of the invasive species for which the designation was issued.

(2) At a check station, the departments may examine the exterior of vessels for the presence of an invasive species and compliance with regulations imposed under [section 8(3)(b)] and with this section.

(3) (a) Except as provided in subsection (3)(b), the owner, operator, or person in possession of a vessel shall stop at any check station unless a medical emergency makes stopping likely to result in death or serious bodily injury.

(b) If a check station is established under regulations pertaining to a statewide invasive species management area, a stop at that check station is required only for a vehicle transporting a vessel, excluding vessels that have never been used.

(4) If during an inspection of the exterior of a vessel the presence of an invasive species is detected upon the exterior of the vessel, that vessel may not leave the check station until it is cleaned and decontaminated in a manner established in accordance with [section 8(3)(b)].

Section 12. Invasive species possession and transfer prohibited -- exceptions. (1) Except as provided in subsection (2), a person may not import, purchase, sell, barter, distribute, propagate, transport, introduce, or possess an invasive species except:

(a) when transporting a specimen to any of the departments or another destination as directed by any of the departments in a sealed container for the purpose of containing, identifying, or reporting the presence of the species or for an approved educational purpose;

(b) when done by a government agency for an approved purpose;

(c) with a proper permit issued by the state or federal government; or

(d) as allowed by rule.

(2) A person who learns of the presence of an invasive species on that person's vessel or property shall notify the department with primary jurisdiction of the species immediately. If the person complies with department requirements for the treatment, control, and eradication of the invasive species, the person must be considered

to be in compliance with this section and is not subject to penalties under [section 14]. This subsection does not apply to a person who purposely or knowingly introduces or attempts to introduce an invasive species in Montana.

Section 13. Emergency response. (1) The governor may declare an invasive species emergency if the introduction or spread of an invasive species has occurred or is imminent.

(2) If an emergency is declared pursuant to subsection (1), the governor may authorize the expenditure of funds pursuant to 10-3-312.

Section 14. Penalty. (1) Except as provided in subsection (2), the following penalties apply:

(a) The offense of negligently violating the provisions of [sections 10 through 12] or rules adopted under [sections 10 through 12] pertaining to an invasive species management area is a misdemeanor punishable by a fine not to exceed \$500.

(b) The offense of purposely or knowingly violating the provisions of [sections 10 through 12] or rules adopted under [sections 10 through 12] pertaining to an invasive species management area is a misdemeanor punishable by a fine not to exceed \$1,000.

(c) Purposely or knowingly attempting to introduce an invasive species in Montana is a felony. Any person found guilty under this subsection (1)(c) is subject to a criminal penalty of up to 2 years in prison, a fine not to exceed \$5,000, or both. A person convicted of violating this subsection (1)(c) may also be required to pay restitution for any cost incurred to mitigate the effect of the violation.

(d) A civil penalty not to exceed \$250 may be imposed on any person who violates any other provision of [sections 10 through 12] or rules adopted under [sections 10 through 12] not enumerated in subsections (1)(a) through (1)(c).

(2) A warning without penalty may be issued to any person violating the provisions of [sections 10 through 12] or rules adopted under [sections 10 through 12] if it is determined that a warning best serves the public interest.

(3) Civil penalties collected under this section must be deposited in the general fund.

Section 15. Section 10-3-312, MCA, is amended to read:

"10-3-312. Maximum expenditure by governor -- appropriation. (1) Whenever a disaster or an

emergency, including an energy emergency as defined in 90-4-302 or an invasive species emergency declared under [section 13], or a disaster is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and, subject to subsection (2), the governor is authorized to expend from the general fund an amount not to exceed \$16 million in any biennium, minus any amount appropriated pursuant to 10-3-310 in the same biennium. The statutory appropriation in this subsection may be used by any state agency designated by the governor.

(2) In the event of the recovery of money expended under this section, the spending authority must be reinstated to a level reflecting the recovery.

(3) If a disaster is declared by the president of the United States, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund an amount not to exceed \$500,000 during the biennium to meet the state's share of the individual and family grant programs as provided in 42 U.S.C. 5178. The statutory appropriation in this subsection may be used by any state agency designated by the governor."

Section 16. Section 87-1-506, MCA, is amended to read:

"87-1-506. Enforcement powers of wardens. (1) A warden may:

- (a) serve a subpoena issued by a court for the trial of a violator of the fish and game laws;
- (b) search, without a warrant, any tent not used as a residence, any boat, vehicle, box, locker, basket, creel, crate, game bag, or package, or their contents upon probable cause to believe that any fish and game law or department rule for the protection, conservation, or propagation of game, fish, birds, or fur-bearing animals has been violated;
- (c) search, with a search warrant, any dwelling house or other building;
- (d) seize game, fish, game birds, and fur-bearing animals and any parts of them taken or possessed in violation of the law or the rules of the department;
- (e) seize and hold, subject to law or the orders of the department, devices that have been used to unlawfully take game, fish, birds, or fur-bearing animals;
- (f) arrest, in accordance with Title 46, chapter 6, a violator of a fish and game law or rule of the department, violation of which is a misdemeanor;
- (g) enforce the disorderly conduct and public nuisance laws, 45-8-101 and 45-8-111, as they apply to

the operation of motorboats on all waters of the state;

(h) as provided for in 37-47-345, investigate and make arrests for violations of the provisions of Title 37, chapter 47, and of any rules adopted pursuant to that chapter relating to the regulation of outfitters and guides in the state; ~~and~~

(i) enforce the provisions of [sections 10 through 12] and rules adopted under [sections 10 through 12] for those invasive species that are under the department's jurisdiction; and

~~(i)~~(j) exercise the other powers of peace officers in the enforcement of the fish and game laws, the rules of the department, and judgments obtained for violation of those laws or rules.

(2) The meat of game animals that are seized pursuant to subsection (1)(d) must be donated directly to the Montana food bank network; or to public or charitable institutions; to the extent reasonably feasible. Any meat that the department is unable to donate must be sold pursuant to 87-1-511, with the proceeds to be distributed as provided in 87-1-513(2)."

Section 17. Section 87-5-721, MCA, is amended to read:

"87-5-721. Penalty -- license and permit revocation and denial. (1) Except as provided in subsection (2), a person who violates a provision of this part is guilty of a misdemeanor punishable as provided in 87-1-102, and the department, upon conviction of the person, shall revoke any license or permit issued by it under this title to the person and deny any application by the person for a license or permit under this title for a period not to exceed 2 years from the date of the conviction.

(2) A person who intentionally imports, introduces, or transplants fish in violation of this part:

(a) is guilty of an offense punishable by a fine of not less than \$500 or more than \$5,000 and imprisonment for up to 1 year. A sentencing court may consider an appropriate amount of community service in lieu of imprisonment. A sentencing court may not defer or suspend \$500 of the fine amount.

(b) is civilly liable for the amount necessary to eliminate or mitigate the effects of the violation. The damages may be recovered on behalf of the public by the department or by the county attorney of the county in which the violation occurred, in a civil action in a court of competent jurisdiction. Money recovered by the department or a county attorney must be deposited in the state special revenue fund as provided in 87-1-601(1).

(c) upon conviction or forfeiture of bond or bail, shall forfeit from the date of conviction or forfeiture any current hunting, fishing, or trapping license issued under this title and the privilege to hunt, fish, or trap in this state

for not less than 24 months. If the time necessary to eliminate or mitigate the effects of the violation exceeds 24 months, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for more than 24 months. If the effects of the violation cannot be eliminated or mitigated, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for the lifetime of that person.

(3) Any exotic wildlife held in violation of this part must be shipped out of state, returned to the point of origin, or destroyed within ~~6 months of a conviction or sooner if ordered by the court a time set by the department,~~ not to exceed 6 months. The person in possession of the exotic wildlife may choose the method of disposition. If the person in possession of the exotic wildlife does not comply with this requirement, the department may confiscate and then house, transport, or destroy the unlawfully held exotic wildlife. The department may charge any person convicted of a violation of this part for the costs associated with the handling, housing, transporting, or destroying of the exotic wildlife."

Section 18. Codification instruction. [Sections 1 through 14] are intended to be codified as an integral part of Title 80, chapter 7, and the provisions of Title 80, chapter 7, apply to [sections 1 through 14].

Section 19. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. Effective date. [This act] is effective July 1, 2009.

- END -

I hereby certify that the within bill,
SB 0343, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2009.

Speaker of the House

Signed this _____ day
of _____, 2009.

SENATE BILL NO. 343

INTRODUCED BY JACKSON, ANKNEY, BALES, B. BECK, BELCOURT, BENNETT, BLACK, BLASDEL,
BOSS RIBS, BRENDEN, D. BROWN, BRUEGGEMAN, BUTCHER, DRISCOLL, GLASER, HINKLE,
INGRAHAM, MACLAREN, NOONEY, PEASE-LOPEZ, POMNICHOWSKI, REGIER, REICHNER, ROBERTS,
TAYLOR, WANZENRIED, ZINKE

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