

## CHAPTER 84D

## HARMFUL EXOTIC SPECIES

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## 84D 01 DEFINITIONS

Subdivision 1 **Terms** For the purposes of this chapter, the following terms have the meanings given them

Subd 2 **Aquatic macrophyte** "Aquatic macrophyte" means a macroscopic non-woody plant, either a submerged, floating leafed, floating, or emergent plant that naturally grows in water

Subd 3 **Commissioner** "Commissioner" means the commissioner of the department of natural resources

Subd 4 **Department** "Department" means the department of natural resources

Subd 5 **Exotic species** "Exotic species" means a wild animal species or aquatic plant species that is not a native species

Subd 6 **Eurasian water milfoil** "Eurasian water milfoil" means *Myriophyllum spicatum*

Subd 7 **Harmful exotic species** "Harmful exotic species" means an exotic species that can naturalize and either

(1) causes or may cause displacement of, or otherwise threaten, native species in their natural communities, or

(2) threatens or may threaten natural resources or their use in the state

Subd 8 **Infested waters** "Infested waters" means waters of the state designated by the commissioner under sections 84D 03, subdivision 1, and 84D 12

Subd 9 **Introduction** "Introduction" means the release or escape of an exotic species into a free-living state

Subd 10 [Repealed, 1999 c 92 s 11]

Subd 11 **Native species** "Native species" means an animal or plant species naturally present and reproducing within this state or that naturally expands from its historic range into this state

Subd 12 **Naturalize** "Naturalize" means to establish a self-sustaining population of exotic species in the wild outside of its natural range

Subd 13 **Prohibited exotic species** "Prohibited exotic species" means a harmful exotic species that has been designated as a prohibited exotic species in a rule adopted by the commissioner under section 84D 12

Subd 14 **Purple loosestrife** "Purple loosestrife" means *Lythrum salicaria*, *Lythrum virgatum*, or combinations thereof

Subd 15 **Regulated exotic species** "Regulated exotic species" means a harmful exotic species that has been designated as a regulated exotic species in a rule adopted by the commissioner under section 84D 12

Subd 16 **Transport** "Transport" means to cause or attempt to cause a species to be carried or moved into or within the state, and includes accepting or receiving the species for transportation or shipment. Transport does not include the unintentional transport of a species within a water of the state or to a connected water of the state where the species being transported is already present

Subd 17 **Unlisted exotic species** ‘Unlisted exotic species’ means an exotic species that has not been designated as a prohibited exotic species, a regulated exotic species, or an unregulated exotic species in a rule adopted by the commissioner under section 84D 12

Subd 18 **Unregulated exotic species** “Unregulated exotic species” means an exotic species that has been designated as an unregulated exotic species in a rule adopted by the commissioner under section 84D 12

Subd 19 **Watercraft** “Watercraft” means a contrivance used or designed for navigation on water and includes seaplanes

Subd 20 **Waters of the state** “Waters of the state’ has the meaning given in section 97A 015, subdivision 54

Subd 21 **Wild animal** “Wild animal” means a living creature, not human, wild by nature, endowed with sensation and power of voluntary motion

Subd 22 **Zebra mussel** ‘Zebra mussel’ means a species of the genus *Dreissena*

**History** 1996 c 385 art 1 s 1, 1999 c 92 s 2

## 84D 02 HARMFUL EXOTIC SPECIES MANAGEMENT PROGRAM

Subdivision 1 **Establishment** The commissioner shall establish a statewide program to prevent and curb the spread of harmful exotic species The program must provide for coordination among governmental entities and private organizations to the extent practicable The commissioner shall seek available federal funding and grants for the program

Subd 2 **Purple loosestrife and Eurasian water milfoil programs** (a) The program required in subdivision 1 must include specific programs to curb the spread and manage the growth of purple loosestrife and Eurasian water milfoil These programs must include

(1) compiling inventories and monitoring the growth of purple loosestrife and Eurasian water milfoil in the state, for which the commissioner may use volunteers,

(2) publication and distribution of informational materials to boaters and lake shore owners,

(3) cooperative research with the University of Minnesota and other public and private research facilities to study the use of nonchemical control methods, including biological control methods, and

(4) managing the growth of Eurasian water milfoil and purple loosestrife in coordination with appropriate local units of government, special purpose districts, and lakeshore associations, to include providing requested technical assistance

(b) The commissioners of agriculture and transportation shall cooperate with the commissioner to establish, implement, and enforce the purple loosestrife program

Subd 3 **Management plan** By July 1, 1997, the commissioner shall prepare a long-term plan which may include specific plans for individual species, for the statewide management of harmful exotic species The plan must address

(1) coordinated detection and prevention of accidental introductions,

(2) coordinated dissemination of information about harmful exotic species among resource management agencies and organizations,

(3) a coordinated public education and awareness campaign,

(4) coordinated control of selected harmful exotic species on lands and public waters,

(5) participation by lake associations, local citizen groups, and local units of government in the development and implementation of local management efforts,

(6) a reasonable and workable inspection requirement for watercraft and equipment including those participating in organized events on the waters of the state,

(7) the closing of points of access to infested waters, if the commissioner determines it is necessary, for a total of not more than seven days during the open water season for control or eradication purposes,

(8) maintaining public accesses on infested waters to be reasonably free of aquatic macrophytes, and

(9) notice to travelers of the penalties for violation of laws relating to harmful exotic species

**Subd 4 Inspection of watercraft** The commissioner shall authorize personnel to inspect, for a minimum of 20,000 hours during the open water season, watercraft and associated equipment, including weed harvesters, that leave or are removed from waters of the state

**Subd 5 Regional cooperation** The commissioner shall seek cooperation with other states and Canadian provinces for the purposes of management and control of harmful exotic species

**Subd 6 Annual report** By January 15 each year, the commissioner shall submit a report on harmful exotic species to the legislative committees having jurisdiction over environmental and natural resource issues. The report must include

(1) detailed information on expenditures for administration, education, management, inspections, and research,

(2) an analysis of the effectiveness of management activities conducted in the state, including chemical control, harvesting, educational efforts, and inspections,

(3) information on the participation of other state agencies, local government units, and interest groups in control efforts,

(4) information on management efforts in other states,

(5) information on the progress made in the management of each species, and

(6) an assessment of future management needs

**History** 1996 c 385 art 1 s 2, 1999 c 92 s 3

### 84D 03 INFESTED WATERS, RESTRICTED ACTIVITIES

**Subdivision 1 Infested waters, restricted activities** (a) The commissioner shall designate a water of the state as an infested water if the commissioner determines that the water contains a harmful exotic species that could spread to other waters if use of the water and related activities are not regulated to prevent this

(b) When determining which harmful exotic species comprise infested waters, the commissioner shall consider

(1) the extent of a species distribution within the state,

(2) the likely means of spread for a species, and

(3) whether regulations specific to infested waters containing a specific species will effectively reduce that species' spread

(c) The presence of common carp and curly leaf pondweed shall not be the basis for designating a water as infested

**Subd 2** [Repealed, 1999 c 92 s 11]

**Subd 3 Bait harvest from infested waters** (a) The taking of wild animals from infested waters for bait or aquatic farm purposes is prohibited, except as provided in paragraph (b)

(b) In waters that are designated as infested waters, except those designated because they contain prohibited exotic species of fish, the taking of wild animals may be permitted for

(1) commercial taking of wild animals for bait and aquatic farm purposes according to a permit issued under section 84D 11, subject to rules adopted by the commissioner, and

(2) bait purposes for noncommercial personal use in waters that contain Eurasian water milfoil

**History** 1996 c 385 art 1 s 3, 1999 c 92 s 4,5

#### 84D 04 CLASSIFICATION OF EXOTIC SPECIES

Subdivision 1 **Classes** The commissioner shall, as provided in this chapter, classify exotic species according to the following categories

(1) prohibited exotic species, which may not be possessed, imported, purchased, sold, propagated, transported, or introduced except as provided in section 84D 05,

(2) regulated exotic species, which may not be introduced except as provided in section 84D 07,

(3) unlisted exotic species, which are subject to the classification procedure in section 84D 06, and

(4) unregulated exotic species, which are not subject to regulation under this chapter

Subd 2 **Criteria** The commissioner shall consider the following criteria in classifying an exotic species under this chapter

(1) the likelihood of introduction of the species if it is allowed to enter or exist in the state,

(2) the likelihood that the species would naturalize in the state were it introduced,

(3) the magnitude of potential adverse impacts of the species on native species and on outdoor recreation, commercial fishing, and other uses of natural resources in the state,

(4) the ability to eradicate or control the spread of the species once it is introduced in the state, and

(5) other criteria the commissioner deems appropriate

**History** 1996 c 385 art 1 s 4

#### 84D 05 PROHIBITED EXOTIC SPECIES

Subdivision 1 **Prohibited activities** A person may not possess, import, purchase, sell, propagate, transport, or introduce a prohibited exotic species, except

(1) under a permit issued by the commissioner under section 84D 11

(2) in the case of purple loosestrife, as provided by sections 18 75 to 18 88,

(3) under a restricted species permit issued under section 17 457,

(4) when being transported to the department, or another destination as the commissioner may direct, in a sealed container for purposes of identifying the species or reporting the presence of the species,

(5) when being transported for disposal as part of a harvest or control activity under a permit issued by the commissioner pursuant to section 103G 615, or as specified by the commissioner,

(6) when the specimen has been lawfully acquired dead and, in the case of plant species, all seeds are removed or are otherwise secured in a sealed container,

(7) in the form of herbaria or other preserved specimens,

(8) when being removed from watercraft and equipment, or caught while angling, and immediately returned to the water from which they came, or

(9) as the commissioner may otherwise prescribe by rule

Subd 2 **Seizure** Under section 97A 221, the commissioner may seize or dispose of all specimens of prohibited exotic species unlawfully possessed, imported, purchased, sold, propagated, transported, or introduced in the state

**History** 1996 c 385 art 1 s 5

**84D 06 UNLISTED EXOTIC SPECIES**

Subdivision 1 **Process** After the effective date of the rules adopted under section 84D 12, subdivision 1, clause (1), a person may not introduce an unlisted exotic species unless

(1) the person has notified the commissioner in a manner and form prescribed by the commissioner,

(2) the commissioner has made the classification determination required in subdivision 2 and designated the species as appropriate, and

(3) the introduction is allowed under the applicable provisions of this chapter

Subd 2 **Classification** (a) If the commissioner determines that a species for which a notification is received under subdivision 1 should be classified as a prohibited exotic species, the commissioner shall

(1) adopt a rule under section 84D 12, subdivision 3, designating the species as a prohibited exotic species, and

(2) notify the person from which the notification was received that the species is subject to section 84D 04

(b) If the commissioner determines that a species for which a notification is received under subdivision 1 should be classified as an unregulated exotic species, the commissioner shall

(1) adopt a rule under section 84D 12, subdivision 3, designating the species as an unregulated species, and

(2) notify the person from which the notification was received that the species is not subject to regulation under this chapter

(c) If the commissioner determines that a species for which a notification is received under subdivision 1 should be classified as a regulated exotic species, the commissioner shall notify the applicant that the species is subject to the requirements in section 84D 07

**History** 1996 c 385 art 1 s 6

**84D 07 REGULATED EXOTIC SPECIES**

Except as provided in rules adopted under section 84D 12, subdivision 2, clause (1), a person may not introduce a regulated exotic species without a permit issued by the commissioner

**History** 1996 c 385 art 1 s 7

**84D 08 ESCAPE OF EXOTIC SPECIES**

(a) A person that allows or causes the introduction of an animal that is a prohibited, regulated, or unlisted exotic species shall, within 48 hours after learning of the introduction, notify the commissioner, a conservation officer, or another person designated by the commissioner. The person shall make every reasonable attempt to recapture or destroy the introduced animal. If the animal is a prohibited exotic species, the person is liable for the actual costs incurred by the department in capturing or controlling, or attempting to capture or control, the animal and its progeny. If the animal is a regulated exotic species, the person is liable for these costs if the introduction was in violation of the person's permit issued under section 84D 11

(b) A person that complies with this section is not subject to criminal penalties under section 84D 13 for the introduction

**History** 1996 c 385 art 1 s 8

**84D 09 AQUATIC MACROPHYTES**

Subdivision 1 **Transportation prohibited** A person may not transport aquatic macrophytes on any state forest road as defined by section 89 001, subdivision 14, any

road or highway as defined in section 160 02, subdivision 7, or any other public road, except as provided in this section

**Subd 2 Exceptions** Unless otherwise prohibited by law, a person may transport aquatic macrophytes

- (1) that are duckweeds in the family Lemnaceae,
- (2) for disposal as part of a harvest or control activity conducted under an aquatic plant management permit pursuant to section 103G 615, under permit pursuant to section 84D 11, or as specified by the commissioner,
- (3) for purposes of constructing shooting or observation blinds in amounts sufficient for that purpose, provided that the aquatic macrophytes are emergent and cut above the waterline,
- (4) when legally purchased or traded by or from commercial or hobbyist sources for aquarium, wetland or lakeshore restoration, or ornamental purposes,
- (5) when harvested for personal or commercial use if in a motor vehicle,
- (6) to the department, or another destination as the commissioner may direct, in a sealed container for purposes of identifying a species or reporting the presence of a species,
- (7) when transporting a commercial aquatic plant harvester to a suitable location for purposes of cleaning any remaining aquatic macrophytes,
- (8) that are wild rice harvested under section 84 091, or
- (9) in the form of fragments of emergent aquatic macrophytes incidentally transported in or on watercraft or decoys used for waterfowl hunting during the waterfowl season

**History** 1996 c 385 art 1 s 9, 1999 c 92 s 6

#### 84D 10 PROHIBITED ACT, WATERCRAFT

**Subdivision 1 Launching prohibited** A person may not place or attempt to place into waters of the state a watercraft, a trailer, or plant harvesting equipment that has aquatic macrophytes, zebra mussels, or prohibited exotic species attached except as provided in this section

**Subd 2 Exceptions** Unless otherwise prohibited by law, a person may place into the waters of the state a watercraft or trailer with aquatic macrophytes

- (1) that are duckweeds in the family Lemnaceae,
- (2) for purposes of shooting or observation blinds in amounts sufficient for that purpose, if the aquatic macrophytes are emergent and cut above the waterline,
- (3) that are wild rice harvested under section 84 091, or
- (4) in the form of fragments of emergent aquatic macrophytes incidentally transported in or on watercraft or decoys used for waterfowl hunting during the waterfowl season

**Subd 3 Removal and confinement** A conservation officer or other licensed peace officer may order

- (1) the removal of aquatic macrophytes or prohibited exotic species from a trailer or watercraft before it is placed into waters of the state,
- (2) confinement of the watercraft at a mooring, dock, or other location until the watercraft is removed from the water, and
- (3) removal of a watercraft from waters of the state to remove prohibited exotic species if the water has not been designated by the commissioner as being infested with that species

**History** 1996 c 385 art 1 s 10, 1999 c 92 s 7

**84D 11 PERMITS**

Subdivision 1 **Prohibited exotic species** The commissioner may issue a permit for the propagation, possession, importation, purchase, or transport of a prohibited exotic species for the purposes of disposal, control, research, or education

Subd 2 **Regulated exotic species** The commissioner may issue a permit for the introduction of a regulated exotic species

Subd 2a **Harvest of bait from infested waters** The commissioner may issue a permit to allow the harvest of bait from waters that are designated as infested waters, except those designated because they contain prohibited exotic species of fish The permit shall include conditions necessary to avoid spreading harmful exotic species Before receiving a permit, a person annually must satisfactorily complete harmful exotic species related training provided by the commissioner

Subd 3 **Standard** The commissioner may issue a permit under this section only if the commissioner determines that the permitted activity would not pose an unreasonable risk of harm to natural resources or their use in the state The commissioner may deny, issue with conditions, modify, or revoke a permit under this section as necessary to ensure that the proposed activity will not pose an unreasonable risk of harm to natural resources or their use in the state

Subd 4 **Appeal of permit decision** A permit decision may be appealed as a contested case under chapter 14

**History** 1996 c 385 art 1 s 11, 1999 c 92 s 8

**84D 12 RULES**

Subdivision 1 **Required rules** The commissioner shall adopt rules

(1) designating infested waters, prohibited, regulated, and unregulated exotic species,

(2) governing the application for and issuance of permits under this chapter, which rules may include a fee schedule, and

(3) governing notification under section 84D 08

Subd 2 **Authorized rules** The commissioner may adopt rules

(1) regulating the possession, importation, purchase, sale, propagation, transport, and introduction of harmful exotic species, and

(2) regulating the appropriation, use, and transportation of water from infested waters

Subd 3 **Expedited rules** The commissioner may adopt rules under section 84 027, subdivision 13 that designate

(1) prohibited exotic species,

(2) regulated exotic species,

(3) unregulated exotic species, and

(4) infested waters

**History** 1996 c 385 art 1 s 12, 1999 c 92 s 9,10

**84D 13 ENFORCEMENT, PENALTIES**

Subdivision 1 **Enforcement** Unless otherwise provided, this chapter and rules adopted under section 84D 12 may be enforced by conservation officers under sections 97A 205, 97A 211, and 97A 221 and by other licensed peace officers

Subd 2 **Cumulative remedy** The authority of conservation officers to issue civil citations is in addition to other remedies available under law, except that the state may not seek penalties under any other provision of law for the incident subject to the citation

Subd 3 **Criminal penalties** (a) A person who violates a provision of section 84D 05, 84D 06, 84D 07, 84D 08, or 84D 10, or a rule adopted under section 84D 12, is guilty of a misdemeanor

(b) A person who refuses to obey an order of a peace officer or conservation officer to remove prohibited exotic species or aquatic macrophytes from any watercraft, trailer, or plant harvesting equipment is guilty of a misdemeanor

Subd 4 **Warnings, civil citations** After appropriate training, conservation officers, other licensed peace officers, and other department personnel designated by the commissioner may issue warnings or citations to a person who

- (1) unlawfully transports prohibited exotic species or aquatic macrophytes,
- (2) unlawfully places or attempts to place into waters of the state a trailer, a watercraft, or plant harvesting equipment that has prohibited exotic species attached,
- (3) unlawfully angles, anchors, or operates a watercraft in a marked area of a Eurasian water milfoil limited infestation, or
- (4) intentionally damages, moves, removes, or smks a buoy marking, as prescribed by rule, Eurasian water milfoil

Subd 5 **Civil penalties** A civil citation issued under this section may impose civil penalties up to the following penalty amounts

- (1) for transporting aquatic macrophytes on a forest road as defined by section 89 001, subdivision 14, road or highway as defined by section 160 02, subdivision 7, or any other public road, \$50,
- (2) for placing or attempting to place into waters of the state a watercraft, a trailer, or plant harvesting equipment that has aquatic macrophytes attached, \$100,
- (3) for transporting a prohibited exotic species other than an aquatic macrophyte, \$100,
- (4) for placing or attempting to place into waters of the state a watercraft, a trailer, or plant harvesting equipment that has prohibited exotic species attached when the waters are not designated by the commissioner as being infested with that species, \$500 for the first offense and \$1,000 for each subsequent offense,
- (5) for angling, anchoring, or operating a watercraft in a marked area of a Eurasian water milfoil limited infestation, other than as provided by law, \$100, and
- (6) for intentionally damaging, moving, removing, or sinking a buoy marking, as prescribed by rule, Eurasian water milfoil, \$100

Subd 6 **Watercraft license suspension** A civil citation may be issued to suspend, for up to a year, the watercraft license of an owner or person in control of a watercraft or trailer who refuses to submit to an inspection under section 84D 02, subdivision 4, or who refuses to comply with a removal order given under section 84D 13

Subd 7 **Satisfaction of civil penalties** A civil penalty is due and a watercraft license suspension is effective 30 days after issuance of the civil citation. A civil penalty collected under this section is payable to the commissioner and must be credited to the water recreation account

Subd 8 **Appeal of civil citations and penalties** A civil citation and penalty may be appealed under the procedures in section 116 072, subdivision 6, if the person to whom the citation was issued requests a hearing by notifying the commissioner within 15 days after receipt of the citation. If a hearing is not requested within the 15 day period, the citation becomes a final order not subject to further review

**History** 1996 c 385 art 1 s 13

## 84D 14 EXEMPTIONS

This chapter does not apply to

- (1) pathogens and terrestrial arthropods regulated under sections 18 44 to 18 61, or
- (2) mammals and birds defined by statute as livestock

**History** 1996 c 385 art 1 s 14