



The Legislature  
of the  
State of New Mexico

49th Legislature, 2nd Session

LAWS 2010

CHAPTER 89

HOUSE BILL 113

with emergency clause

Introduced by

REPRESENTATIVE DON L. TRIPP

REPRESENTATIVE KATHY A. McCOY



**EMERGENCY CLAUSE**

# Chapter 89

AN ACT

RELATING TO GAME AND FISH; AMENDING A SECTION OF CHAPTER 17, ARTICLE 4 NMSA 1978 TO PROVIDE FOR AUTHORITY FOR THE CONTROL AND PREVENTION OF THE SPREAD OF AQUATIC INVASIVE SPECIES IN NEW MEXICO; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 17-4-35 NMSA 1978 (being Laws 2009, Chapter 38, Section 1) is amended to read:

"17-4-35. AQUATIC INVASIVE SPECIES CONTROL.--

A. Based on a determination of credible scientific evidence, the director, after consulting with the secretary of energy, minerals and natural resources and with the concurrence of the director of the New Mexico department of agriculture, is authorized to designate:

(1) species of exotic or nonnative animals or plants as aquatic invasive species;

(2) water bodies within the state as infested waters; and

(3) specific requirements to decontaminate conveyances and equipment.

B. Prior to entering a conveyance or equipment into any water body in the state, the owner or person in control of a warning-tagged conveyance or warning-tagged equipment or a conveyance or equipment that has been in an

1 infested water body in New Mexico or elsewhere shall:

2 (1) have the conveyance or equipment  
3 decontaminated by a person or entity approved by the director  
4 to effect decontamination, and only the person legally  
5 effecting the decontamination is authorized to remove a  
6 warning tag and provide certification that the conveyance or  
7 equipment is free from infestation; or

8 (2) have the conveyance or equipment  
9 inspected and certified as free from infestation by trained  
10 personnel prior to entering a water body or if certification  
11 or other documentation of decontamination is not available,  
12 otherwise demonstrate compliance with the decontamination  
13 requirements established by the director.

14 C. A law enforcement officer may impound a  
15 conveyance or equipment if the person transporting the  
16 conveyance or equipment refuses to submit to an inspection  
17 authorized by this section and the officer has reason to  
18 believe that an aquatic invasive species may be present, or if  
19 the conveyance or equipment has a warning tag affixed and the  
20 operator of the conveyance is attempting to enter a state  
21 water body and cannot provide evidence that the conveyance or  
22 equipment has been decontaminated. A law enforcement officer  
23 shall take action to prevent equipment or conveyances believed  
24 or known to contain an aquatic invasive species and warning-  
25 tagged equipment or conveyances from entering a state water

1 body.

2 D. The impoundment of a conveyance or equipment  
3 may continue for a reasonable period necessary to inspect and  
4 decontaminate the conveyance or equipment.

5 E. Notwithstanding any provision to the contrary,  
6 no motor vehicle that is drawing a conveyance shall be  
7 impounded pursuant to this section.

8 F. Trained personnel may:

9 (1) establish, operate and maintain aquatic  
10 invasive species check stations and conduct inspections at or  
11 adjacent to the entrance to any state-controlled water body  
12 or, pursuant to a cooperative agreement, at or adjacent to any  
13 county, municipal or federally or privately controlled water  
14 body or at or adjacent to the exit point of an infested water  
15 body or at a location agreed to by the owner of the conveyance  
16 or equipment in order to inspect conveyances and equipment  
17 prior to a conveyance or equipment entering, being launched  
18 onto or being directly exposed to water bodies of the state or  
19 upon the conveyance's or equipment's departure from infested  
20 waters;

21 (2) affix a warning tag to equipment or a  
22 conveyance where the presence of an aquatic invasive species  
23 has been found;

24 (3) affix a warning tag to a conveyance or  
25 equipment upon the conveyance or equipment leaving an infested

1 water; or

2 (4) affix a warning tag to a conveyance or  
3 equipment that the trained personnel have reason to believe is  
4 infested with an aquatic invasive species based on its point  
5 of origin or use.

6 G. Except for state, local, tribal or federal  
7 agencies and their respective agents, employees and  
8 contractors while performing their duties or contractual  
9 obligations specific to management or control of an aquatic  
10 invasive species, it is unlawful for a person to:

11 (1) knowingly possess, import, export, ship  
12 or transport an aquatic invasive species into, within or from  
13 the state;

14 (2) knowingly release, place, plant or cause  
15 to be released, placed or planted an aquatic invasive species  
16 into a water body or adjacent to a water body where it  
17 reasonably might be anticipated to be introduced into a water  
18 body that is not infested;

19 (3) remove a warning tag other than as  
20 provided pursuant to this section;

21 (4) introduce any tagged conveyance or  
22 equipment or any equipment or conveyance from which a warning  
23 tag has been unlawfully removed into a water body without  
24 first having that conveyance or equipment decontaminated and  
25 certified pursuant to the provisions of this section; or

1 (5) knowingly introduce into any water body  
2 a conveyance or equipment that has been exposed to an infested  
3 water body or a water body in any other state known to contain  
4 aquatic invasive species without first being decontaminated  
5 and certified pursuant to the provisions of this section.

6 H. Knowingly or willfully violating any provision  
7 of this section as a first offense is a petty misdemeanor. A  
8 second or subsequent violation of any provision of this  
9 section is a misdemeanor. Any violation is punishable  
10 pursuant to Section 31-19-1 NMSA 1978.

11 I. The director or the director's designee shall  
12 coordinate the monitoring of the water bodies of the state for  
13 the presence of aquatic invasive species, including privately  
14 controlled waters if the director has authorized access to  
15 them or has received permission to monitor them from the  
16 persons controlling access to such waters.

17 J. Upon determination of an infested water body in  
18 New Mexico, the director shall immediately recommend to the  
19 person in control of the infested water body actions to limit  
20 access or take other actions to prevent the potential spread  
21 of an aquatic invasive species to other water bodies.

22 K. The commission is authorized to adopt rules  
23 pursuant to Section 17-1-26 NMSA 1978, and the secretary of  
24 energy, minerals and natural resources is authorized to adopt  
25 rules pursuant to Section 16-2-32 NMSA 1978 as necessary to

1 implement and enforce the provisions of this section.

2 L. The director may enter into cooperative  
3 agreements with any federal, state, county or municipal  
4 authority or private entity that may be in control of a water  
5 body potentially affected by aquatic invasive species.

6 M. As used in this section:

7 (1) "aquatic invasive species" means quagga  
8 mussels and zebra mussels and other exotic or nonnative  
9 aquatic animals, including invertebrates but excluding those  
10 species listed as protected in Chapter 17 NMSA 1978, or any  
11 plant or animal species whose introduction into an aquatic  
12 ecosystem is determined by the director, after consulting with  
13 the secretary of energy, minerals and natural resources and  
14 with the concurrence of the director of the New Mexico  
15 department of agriculture, to cause or be likely to cause harm  
16 to the economy, environment or human health or safety;

17 (2) "commission" means the state game  
18 commission;

19 (3) "conveyance" means a motor vehicle,  
20 vessel, trailer or any associated equipment or containers,  
21 including, but not limited to, live wells, fish-hauling tanks,  
22 ballast tanks, motorized skis and bilge areas that may contain  
23 or carry an aquatic invasive species or any other equipment by  
24 which aquatic invasive species may be introduced into an  
25 aquatic ecosystem;

1 (4) "decontaminate" means to wash, drain,  
2 dry or otherwise treat a conveyance in accordance with  
3 guidelines established by the director in order to remove or  
4 destroy an aquatic invasive species;

5 (5) "director" means the director of the  
6 department of game and fish;

7 (6) "equipment" means an article, a tool, an  
8 implement, a device or a piece of clothing, including boots  
9 and waders, that is capable of containing or transporting  
10 water;

11 (7) "infested water" means a geographic  
12 region, water body or water supply system or facility within  
13 the state that the director, after consulting with the  
14 secretary of energy, minerals and natural resources and with  
15 the concurrence of the director of the New Mexico department  
16 of agriculture, identifies as carrying or containing an  
17 aquatic invasive species or a water body outside the state  
18 that has been identified as carrying or containing an aquatic  
19 invasive species;

20 (8) "inspect" means to examine a conveyance  
21 or equipment to determine whether an aquatic invasive species  
22 is present;

23 (9) "law enforcement officer" means a state  
24 or federal certified law enforcement officer;

25 (10) "trained personnel" means individuals



1 who have successfully completed the United States fish and  
2 wildlife service's aquatic invasive species watercraft  
3 inspection and decontamination training, level I or level II,  
4 or an equivalent training recognized by the director;

5 (11) "warning tag" means a tag that is  
6 affixed to equipment or a conveyance upon the equipment or  
7 conveyance leaving an infested water or upon an inspection  
8 determining that the equipment or conveyance contains an  
9 aquatic invasive species that requires the equipment or  
10 conveyance to be decontaminated; and

11 (12) "water body" means a natural or  
12 impounded surface water, including a stream, river, spring,  
13 lake, reservoir, pond, wetland, tank or fountain."

14 Section 2. EMERGENCY.--It is necessary for the public  
15 peace, health and safety that this act take effect  
16 immediately.

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BEN LUJAN, SPEAKER  
HOUSE OF REPRESENTATIVES



STEPHEN R. ARIAS, CHIEF CLERK  
HOUSE OF REPRESENTATIVES



DIANE D. DENISH, PRESIDENT  
SENATE



LENORE M. NARANJO, CHIEF CLERK  
SENATE

Approved by me this 8<sup>th</sup> day of March, 2010



BILL RICHARDSON, GOVERNOR  
STATE OF NEW MEXICO

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SECRETARY OF STATE

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