

By Mr. Fallon of Malden, petition of Christopher G. Fallon relative to the creation of the non-indigenous species management plan and listing process for non-native species. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT CREATING THE NON INDIGENOUS SPECIES MANAGEMENT PLAN AND LISTING PROCESS FOR NON NATIVE SPECIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 1. Definitions.

2 Terms. For the purposes of this chapter, the following terms
3 have the meanings given them.

4 (A) "Biological control organism" means any species used to
5 control a harmful non-indigenous species.

6 (B) "Control" means eradicating, suppressing, reducing, or
7 managing harmful non-indigenous species populations, preventing
8 the spread of harmful non-indigenous species from areas where
9 they are present and taking steps such as protection and restora-
10 tion of native species populations and habitats to reduce the
11 impacts of harmful non-indigenous species and to prevent further
12 invasions of harmful non-indigenous species.

13 (C) "Department" means the Department of Natural Resources.

14 (D) "Director" means the Director of the Department of Natural
15 Resources.

16 (E) "Dispersal" refers to the natural or human-related spread of
17 non-indigenous species from one water, wetland, or land area to
18 other waters, wetlands, or land areas.

19 (F) "Established" means, when used in reference to a species,
20 occurring as a reproducing, self-sustaining population in an open
21 ecosystem.

22 (G) "Importation" means the act of bringing or introducing
23 species into any place subject to the authority of the state or other

24 appropriate jurisdictions from outside of the geographical borders
25 of the state.

26 (H) “Intentionally” means to purposely or knowingly commit
27 an act, such as an introduction, release, transportation, importa-
28 tion, or exportation.

29 (I) “Introduction” means the intentional or unintentional
30 release, escape, dissemination, or placement of a species into an
31 ecosystem as a result of human activity.

32 (J) “Harmful non-indigenous species” means a non-indigenous
33 species that can naturalize and either:—

34 1. Causes or may cause displacement of, or otherwise threaten
35 native species in their natural communities or ecosystems; or

36 2. Threatens or may threaten natural resources or their use in
37 the state.

38 (K) “Manage” means to prevent new harmful non-indigenous
39 species introductions into the state; to limit the dispersal of estab-
40 lished harmful non-indigenous species populations into uninfested
41 land areas, wetlands, and waters of the state; and to abate harmful
42 ecological, economic and public health impacts resulting from the
43 introduction, dispersal, or presence of harmful non-indigenous
44 species in the state.

45 (L) “Native species” refer to any species originally living,
46 growing, or produced in an ecosystem within its historic range.

47 (M) “Naturalized” refers to a non-indigenous species that is
48 established as a self-sustaining population through natural repro-
49 duction in the wild outside its native range.

50 (N) “Non-indigenous species” means any non-native plant,
51 animal, or other viable biological material that enters and dis-
52 perses in an ecosystem beyond its native range.

53 (O) “Permit” means a written authorization, including by elec-
54 tronic methods, by the Director to propagate, possess, import, pur-
55 chase, or transport species under conditions prescribed by the
56 Director pursuant to this Act.

57 (P) “Possession” means having direct physical control of a
58 species at a given time or having both the power and intention to
59 exercise dominion or control of a species either directly or
60 through another person or persons.

61 (Q) “Prevent” means to identify and interrupt pathways by
62 which harmful non-indigenous species can be imported, intro-
63 duced, and dispersed.

64 (R) “Prohibited non-indigenous species” or “prohibited
65 species” means a harmful non-indigenous species that has been
66 designated as a prohibited non-indigenous species in a rule
67 adopted by the Director under Section 3. Prohibited species are
68 designated for their harmful impact to native species, ecosystems,
69 and natural resources of the state.

70 (S) “Restricted non-indigenous species” or “restricted species”
71 means a harmful non-indigenous species that has been designated
72 as a restricted non-indigenous species in a rule adopted by the
73 Director under Section 3. Restricted species are subject to permit-
74 ting and regulations deemed appropriate by the Director.

75 (T) “Species” means a group of organisms all of which have a
76 high degree of physical and genetic similarity, generally inter-
77 breed only among themselves, and show persistent differences
78 from members of allied groups of organisms. The term “species”
79 includes any subspecies of animal, plant, or biological material,
80 and any distinct population segment of any species or animal,
81 plant, or biological material which interbreeds when mature.

82 (U) “Stakeholders” include, but not limited to, state and local
83 government agencies, academic institutions, the scientific commu-
84 nity, regional entities, tribal governments, non-government enti-
85 ties including environmental, agricultural and conservation
86 organizations, trade groups, commercial interests, and private
87 landowners.

88 (V) “Stocking” means the international introduction of any life
89 state of a plant or animal into public or private lands, wetlands or
90 waters of the state.

91 (W) “Transport” means to cause or attempt to cause a harmful
92 non-indigenous species to be carried or moved into, across, or
93 within state boundaries, and includes accepting or receiving the
94 species for transportation or shipment.

95 (X) “Unlisted non-indigenous species” or “unlisted species”
96 refers to those non-indigenous species that have not been desig-
97 nated as a prohibited non-indigenous species, a restricted non-
98 indigenous species, or an unrestricted non-indigenous species in a
99 rule adopted by the Director under Section 3.

100 (Y) “Unrestricted non-indigenous species” or “unrestricted
101 species” means a non-indigenous species that has been designated
102 as an unrestricted non-indigenous species in a rule adopted by the

103 Director under Section 3. Unrestricted species do not require any
104 regulation or permitting because that have been evaluated as rela-
105 tively harmless for one or more of the following reasons:— low
106 likelihood to survive in waters, wetlands, or land areas of the state
107 upon introduction; low level of potential impact to the native
108 ecosystem or to resource use; or populations already naturalized
109 in the state.

110 Section 2. Management Authority.

111 Legal authority shall be granted to the Director of the Depart-
112 ment of Natural Resources <or the equivalent> to facilitate the
113 prevention of introduction and dispersal of harmful non indige-
114 nous species in the state. Key responsibilities to be associated
115 with this management authority are as follows:—

116 (A) Interjurisdictional agreements:— The Director shall seek
117 cooperation, as appropriate, with federal, state and tribal authori-
118 ties; regional entities; political jurisdictions of the state; and with
119 other state agencies and organizations for the administration of
120 any program established herein.

121 (B) The Director shall establish a statewide program to prevent
122 and curb the spread of harmful non-indigenous species. In addi-
123 tion, the Director shall develop and implement programs that are
124 compatible with existing federal and state legislation which
125 include, among others, the Non-indigenous Aquatic Nuisance Pre-
126 vention and Control Act of 1990(16 U.S.C. 4701-4741), the
127 National Invasive Species Act of 1990 (18 U.S.C. 42), the Plant
128 Protection Act (7 U.S.C. 7701-7772).

129 (C) Program Implementation:—

130 1. The following mechanisms shall be authorized and utilized
131 to facilitate program implementation:— classification and desig-
132 nation of non-indigenous species; regulatory and rule-making pro-
133 visions; monitoring mechanisms; research projects; permit and
134 inspection procedures; enforcement and penalty stipulations;
135 information and education activities; funding mechanisms;
136 restorations of native species and habitat; regulation of biological
137 control agents; incentives for private landowners; and emergency
138 action protocols.

139 2. The Director is authorized to utilize the following detection
140 and enforcement mechanisms: — seizure, quarantine, and disposal
141 of prohibited, restricted, and unlisted species. The Director is

142 authorized only in the case of emergency to bypass notice periods
143 for entering private lands.

144 3. The Director is authorized to routinely and systematically
145 survey private and public lands for the presence of non-indige-
146 nous species and to map non-indigenous species location and
147 those areas particularly at risk for non-indigenous species.

148 (D) State Agency Duties.

149 (1) Each state agency whose actions may affect the status of
150 harmful non-indigenous species shall, to the extent practicable
151 and permitted by law:

152 (a) identify such actions;

153 (b) subject to the availability of appropriations, and within
154 Administration budgetary limits, use relevant programs and
155 authorities to:—

156 (i) prevent the introduction of harmful non-indigenous species;

157 (ii) detect and respond rapidly to and control populations of
158 such species in a cost-effective and environmentally sound
159 manner.

160 (iii) monitor non-indigenous species populations accurately and
161 reliably;

162 (iv) provide for restoration of native species and habitat condi-
163 tions in ecosystems that have been invaded;

164 (v) conduct research on non-indigenous species and develop
165 technologies to prevent introduction and provide for environmen-
166 tally sound control of harmful non-indigenous species; and

167 (vi) promote public education on harmful non-indigenous
168 species and the means to address them; and

169 (c) not authorize, fund , or carry out actions that is believes are
170 likely to cause or promote the introduction or spread of harmful
171 non-indigenous species in the state of Massachusetts unless, pur-
172 suant to guidelines that is has prescribed, the agency has deter-
173 mined and made public its determination that the benefits of such
174 actions clearly outweigh the potential harm caused by invasive
175 species; and that all feasible and prudent measures to minimize
176 risk of harm will be taken in conjunction with the actions.

177 (E) Annual Report. By January 15 each year, the Director shall
178 submit a report on a harmful non-indigenous species to the leg-
179 islative committees having jurisdiction over environmental and
180 natural resource issues. The report must include:—

181 (1) Detailed information on expenditures for administration,
182 education, management, inspections, and research;

183 (2) Detailed information on the loss of state resources due to
184 harmful non-indigenous species;

185 (3) An analysis of the effectiveness of management activities
186 conducted in the state, including but not limited to chemical and
187 biological control, harvesting, takings, educational efforts, inspec-
188 tions, and enforcement actions,

189 (4) Information on the participation of stakeholders in control
190 efforts;

191 (5) Information on management efforts in other states;

192 (6) Information on the progress made in the control of each
193 listed species;

194 (7) An assessment of future management needs.

195 Section 3. Classification and designation of non-indigenous
196 species.

197 (A) Classes. The Director shall, as provided in this chapter,
198 classify non-indigenous species according to the following
199 categories:—

200 1. Prohibited non-indigenous species, which may not be pos-
201 sessed, imported, purchased, sold, propagated, transported, or
202 introduced except as provided in Section 4;

203 2. Restricted non-indigenous species, which may not be intro-
204 duced except as provided in Section 5; and

205 3. Unrestricted non-indigenous species, which are not subject to
206 regulation under this chapter.

207 (B) Criteria. The Director shall use the best available science
208 and shall consider the following criteria in classifying species
209 under this chapter:—

210 1. Whether a species is native or non-indigenous;

211 2. The likelihood that the species, upon introduction, will sur-
212 vive, naturalize, and spread to other land areas, wetlands, or
213 waters of the state;

214 3. The magnitude of adverse impacts of the species on native
215 species and ecosystems on the environment and uses of natural
216 resources in the state, including the following:— the health and
217 population stability of native species, the natural ecosystem and
218 long-term genetic integrity of native species, human health, recre-

219 ation, commercial enterprises, industrial land and water-users, and
220 other appropriate user groups;

221 4. The technical and economic feasibility of eradication or con-
222 trolling the spread of the species once it is introduced in the state;

223 5. Whether the species carries any known diseases, parasites or
224 any non-indigenous species or other viable biological materials;
225 and

226 6. Other criteria the Director deems appropriate.

227 7. Biological control agents are equally subject to classifica-
228 tion, although the director may consider their utility in controlling
229 other non-indigenous species.

230 (C) Listing Process.

231 1. A technical advisory committee, appointed by the Director,
232 shall be formed to assist and make recommendations to the
233 Director as to the listing of non-indigenous species according to
234 the classifications above.

235 2. The list of classified non-indigenous species will include
236 both common and scientific names, and authority and source of
237 nomenclature.

238 3. The list of classified non-indigenous species shall be publi-
239 cized among appropriate target groups within the state through the
240 register, record, and other mechanisms. The list shall be available
241 for public comment for a period of thirty days prior to the Direc-
242 tor's approval. The Director shall consider public comments
243 before final approval of the list of classified non-indigenous
244 species.

245 4. The list of classified non-indigenous species shall be updated
246 annually and as the Director sees fit according to the criteria in
247 this Section.

248 5. Any person may petition the Director to add or change the
249 classification of listed species.

250 a. In the case of a petition submitted under this Section, the
251 Director shall act on the petition within a reasonable time and
252 notify the petitioner of the final action the Director takes on the
253 petition. The Secretary's determination on the petition shall be
254 based on the listing criteria in 3(B) and the listing procedure out-
255 lined in Section 3(C)(1)-(3).

256 Section 4. Prohibited harmful non-indigenous species.

257 (A) Prohibited activities. A person may not possess, import,
258 purchase, sell, propagate, transport, or introduce a prohibited
259 species, except:—

260 1. Under a permit issued by the Director under Section 7;

261 2. When being transported to the Department, or another desti-
262 nation as the Director may direct, in a sealed container for pur-
263 poses of identifying the species or reporting the presence of the
264 species;

265 3. When being transported for disposal as part of a harvest or
266 control activity under a permit issued by the Director pursuant to
267 Section 7 or as specified by the Director;

268 4. When the specimen has been lawfully acquired dead and, in
269 the case of plant species, all seeds are removed or are otherwise
270 secured in a sealed container;

271 5. In the form of herbaria or other preserved specimens;

272 6. As the Director may otherwise prescribe by rule.

273 (B) Seizure. The Director may order the seizure or disposal of
274 all specimens of prohibited non-indigenous species unlawfully
275 possessed, imported, purchased, sold, propagated, transported, or
276 introduced in the state.

277 Section 5. Restricted and unrestricted non-indigenous species.

278 (A) Permitted Activities: — Restricted species are legal to
279 import, transport, purchase, possess, propagate, and sell unless
280 restricted by the species' regulation pursuant to Section 7.

281 (B) Prohibited Activities: — It is illegal to introduce into water,
282 wetlands, and land areas of the state a restricted species without a
283 permit issued by the Director.

284 (C) Unrestricted non-indigenous species refers to those species
285 that have been evaluated as relatively harmless and therefore do
286 not require any regulation or permitting for beneficial uses or
287 under other circumstances.

288 Section 6. Unlisted non-indigenous species.

289 (A) Those species that have not been classified as prohibited,
290 restricted, or unrestricted will be considered as unlisted non-
291 indigenous species.

292 (B) Prohibited Activities: — It is illegal to import, transport,
293 purchase, possess, propagate, sell in the state, or introduce into

294 water, wetlands, and land areas of the state any unlisted non-
295 indigenous species.

296 (C) Application process for the classification and proposed use
297 of the unlisted species:— A permit application form as prescribed
298 by the Director must be submitted regarding the proposed use of
299 the unlisted species involving its import, transport, purchase, pos-
300 session, propagation, sale in the state, or introduction into water,
301 wetlands, and land areas of the state. The applicant must present
302 the best available scientific information on the unlisted species to
303 support a sound management decision regarding its classification
304 and proposed use.

305 (D) Classification and Review Process: — The Director will
306 make the final decision regarding the classification and proposed
307 use of the unlisted species based on the following sources of
308 information:—

309 1. Application of the criteria listed in Section 3(B) and the
310 listing process in Section 3 (C) (1)-(3);

311 2. A review of the application for the proposed use of the
312 unlisted species; and

313 3. Technical advisory committee recommendations.

314 (E) For those species for which the technical advisory com-
315 mittee or the Director determine that the best available science is
316 inadequate to make a sound decision regarding classification and
317 proposed use of the unlisted species, the unlisted species shall
318 remain an unlisted species pending further information.

319 (F) Notification: — The applicant will be notified of the Direc-
320 tor's final decision regarding the proposed use of the unlisted
321 species.

322 Section 7. Permits.

323 (A) Prohibited non-indigenous species. The Director may issue
324 a permit for the propagation, possession, importation, purchase, or
325 transport of a prohibited non-indigenous species for the purposes
326 of disposal, control, research, or education.

327 (B) Restricted non-indigenous species. The Director may issue
328 a permit for the introduction or a restricted non-indigenous
329 species.

330 (C) Standard. The Director may issue a permit under this Sec-
331 tion only if the Director determines that the permitted activity
332 would not pose an unreasonable risk of harm to native ecosystems

333 or natural resources or their use in the state. The Director may
334 deny, issue with conditions, modify, or revoke a permit under this
335 Section as necessary to ensure that the proposed activity will not
336 pose an unreasonable risk of harm to the native ecosystem or the
337 natural resources or their use in the state.

338 (D) Appeal of permit decision. A permit decision may be
339 appealed as a contested case under this act.

340 Section 8. Rules.

341 (A) Required rules. The Director shall adopt rules:—

342 1. Designating prohibited, restricted, and unrestricted non-
343 indigenous species; and

344 2. Governing the application for an issuance of permits under
345 this act, which may include a fee schedule.

346 (B) Authorized rules. The Director may adopt rules regulating
347 the possession, importation, purchase, sale, propagation, transport,
348 and introduction of non-indigenous species.

349 (C) Expedited rules. The Director may adopt rules on an expedited
350 basis in accordance with the needs outlined in section 9(A).

351 Section 9. Emergency Action Protocol.

352 (A) Emergency Action Plan: — The Director shall develop an
353 emergency action plan and have the authority to implement the
354 plan in case the sighting or emergence of a new non-indigenous
355 species or the impact of an existing species necessitates such
356 action. To the extent possible, the development and applicability
357 of each state emergency action plan should be coordinated with
358 other affected states, federal agencies, tribal authorities, regional
359 organizations, and local jurisdictions.

360 (B) Protocol for the unintentional introduction of a non-indige-
361 nous species: — A person who allows or causes the introduction
362 of a non-indigenous species that is prohibited or unlisted shall
363 notify the Director or other appropriate management authority
364 within 48 hours after learning of the escape. The person shall
365 make every reasonable attempt to recapture or contain the intro-
366 duced species.

367 (C) A person who does not comply with this Section is subject
368 to penalties specified in Section 10 (B)(6) Civil Penalties

369 Section 10. Enforcement; penalties.

370 (A) Enforcement authority:— The provisions adopted in this
371 legislation will be enforced based on authority established in Sec-
372 tion 2 and implemented by licensed officers of the state.

373 (B) Civil penalties:— A person shall be issued a warning or
374 assessed a civil penalty if engaging in conduct that violates regu-
375 latory provisions in the following Sections:—

376 1. Section 4. Prohibited harmful non-indigenous species;

377 2. Section 5. Restricted and unrestricted non-indigenous
378 species;

379 3. Section 6. Unlisted non-indigenous species;

380 4. Section 7. Permits;

381 5. Section 8. Rules; and

382 6. Failure to comply with the protocol for the escape of non-
383 indigenous species as specified in Section 9.

384 (C) Criminal penalties:— A person shall be assessed a criminal
385 penalty in engaging in the following acts of conduct:—

386 1. Violation of provisions pertaining to prohibited non-indige-
387 nous species, as specified in Section 4(A);

388 2. Noncompliance with permit requirements pertaining to use
389 of prohibited non-indigenous species, as specified in Section 7
390 (A);

391 3. Violation of provisions pertaining to restricted species as
392 specified in Section 5 (B);

393 4. Violation of provisions pertaining to unlisted non-indigenous
394 species as specified in Section 6(B);

395 5. Refusal to obey enforcement requirements for inspection
396 operations as established by the Director pursuant to Section 2
397 (C)(1) Program Implementation;

398 6. Subsequent offenses in violation of any provision of this leg-
399 islation; and

400 7. Violations involving permit revocation orders or failure to
401 pay fines pursuant to Section 10(B) Civil Penalties.

