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# New Texas Statutes Aimed at Halting Zebra Mussels

[Jeremy Brown](#) September 20, 2013

Tomorrow marks the official end of summer and, in some sense, the traditional [end of the boating season](#). In Central Texas, where year-round [warm weather](#) is a calling-card, we may not have to head for the dock just yet, but the lakes will probably become a little quieter.

Hopefully they will also stay free of zebra mussels.

The dreissena polymorpha – infamous stowaway. Great Lakes scourge – penetrated Texas in 2009 and has rapidly spread through North Texas reservoirs. In its 2013 session, the legislature enacted three new laws aimed at curbing invasive species and particularly at holding the zebra mussel at bay:

- H.B. 1241, which concerns water transfers.
- H.B. 597 and S.B. 1212, both of which are meant to deter boaters from inadvertently transferring mussels from one waterway to another.

### Invasives in Texas

Invasive species are not new to Texas; some of our most iconic animals – like [armadillos](#) and [fire ants](#) – are invaders. All told, Texas Parks and Wildlife Department (TPWD) has identified in Texas waters more than 50 invasive species (30 fish, 6 shellfish, and 19 plant species). In 2012, State Impact Texas [named](#) ten invasive species it considered the worst, most of which are aquatic, with the zebra mussel taking home the gold.

It is difficult to [assess](#) the impact that invasive species have had on the Texas economy. A 2006 [study](#) put the impact at \$133.6 billion nationally. Given its territorial and economic reach, Texas would probably account for a not insignificant share of these impacts, though the state has not had an “[exotics crisis](#)” with a widespread economic magnitude similar to the zebra mussel crisis in the Great Lakes.”

Still, according to one [commentator](#), “[s]alvinia, hydrilla, water hyacinth, zebra mussels and nutria [threaten](#) the Gulf of Mexico with millions of dollars in lost revenue through operational interruptions and control efforts. An influx of invasive species with the magnitude for environmental and socio-economic impact such as the zebra mussel could devastate coastal economies.”

These species have already begun to menace Texas ecosystems. Hydrilla – an aquatic plant that was once [sold for use in aquariums](#) – has spread into many lakes, where it has, among other things, [clogged](#) power plant intakes. In the early 1980s, to control a hydrilla infestation, the state introduced grass carp, which have [since become](#) an invasive threat of their own in the San Jacinto River system.

Salvina – a Brazilian fern that can double in size every couple days – has spread to at least 17 public reservoirs in Texas and has [blanketed](#) Caddo Lake, silting the lakebed and rapidly [transforming](#) parts of the swamp into a marsh. Boats already [struggle](#) to pass through the thick coats of salvina.

### Terrible Reign of Zebra Mussels

In North Texas, the [costliest](#) freshwater aquatic species ever introduced into the United States – the zebra mussel – has staked its claim to reservoirs in the Trinity and Red River watersheds.

Zebra mussels, originally from the Caspian Sea, came to the Great Lakes in 1988, in the ballast of trans-Atlantic cargo ships. They decimated [fisheries](#) in the region and clogged utility pipes so severely that one Michigan town almost had to shut down its municipal water system. At one point, a Michigan state senator considered legislation that would have put a “[zebra mussel tax](#)” line-item on utility bills, to show ratepayers the costs of regularly hiring divers to scrape open intake pipes.

To halt the spread of zebra mussels, Congress passed the Aquatic Nuisance Prevention and Control Act and the National Invasive Species Act, but zebra mussels still infiltrated much of the country: at least [30 states](#) and more than [600 bodies of water](#).

Texas first confirmed the presence of adult zebra mussels in [April 2009](#), in Lake Texoma. In 2012, Texas Parks and Wildlife (TPW) [found](#) zebra mussels in Lake Ray Roberts. In summer 2013, TPW [announced](#) the species had reached Lewisville Lake and Lake Bridgeport. Lake Worth, Eagle Mountain Lake and even the broader Trinity River Basin are considered to be [at risk](#). Because mussels cannot be [eliminated](#) with current technologies, policymakers have focused on trying to [stop](#) them from spreading further.

### Current Anti-Invasive Statutes

Since as far back as 1975, state law has prohibited persons from importing, possessing, selling or releasing “into water of this state harmful or potentially harmful tropical fish or fish eggs” without a permit from TPWD.

Over time, the legislature has expanded upon this prohibition. At present, the Texas Parks and Wildlife Code § 66.015(b) provides generally that “[n]o person may place any species of fish, shellfish, or aquatic plant into the public water of the state without a permit issued by the department.” Section 66.007 establishes broader restrictions for invasive fish and shellfish: “No person may import, possess, sell, or place into the public water of this state exotic harmful or potentially harmful fish or shellfish except as authorized by rule or permit used by the [TPWD].” Section 66.0072(b) levels similar prohibitions against “exotic harmful or potentially harmful exotic plants.” The TPWD has issued regulations identifying invasive fish, shellfish and aquatic species, as shown below.

Section 66.0071 imposes on boaters an affirmative duty to prevent the spread of invasive aquatic species: “On leaving any public or private body of water in this state, a person shall immediately remove and lawfully dispose of any exotic aquatic plant . . . that is clinging or attached to the person’s: (1) vessel or watercraft; or (2) trailer, motor vehicle, or other mobile device used to transport or launch a vessel or watercraft.”

These statutes have broad scope. They apply in all “public water,” meaning “the bays, estuaries, and water of the Gulf of Mexico within the jurisdiction of the state, and the rivers, streams, creeks, bayous, reservoirs, lakes, and portions of those waters where public access is available without discrimination.” Because of the “public access” condition, this definition may not reach all state-owned surface water, and no published case law has interpreted its precise limits. Section 66.0071, of course, applies in both public *and* private water. “Private water” is not defined in the Texas Parks and Wildlife Code or in TPWD’s regulations but could arguably consist of all non-public water.

The definition of “vessel” further ensures that these invasive species laws have breadth. The Texas Parks and Wildlife Code defines that term as “any watercraft, other than a seaplane on water, used or capable of being used for transportation on water.” Courts have found that definition to apply to a sailboat, a pleasure boat, and a motor boat, but it could just as readily [encompass](#) a manually propelled kayak, canoe, or stand-up paddleboard.

### H.B. 1212

H.B. 1212 creates a narrow exception to the Section 66.007 prohibition against placing invasive fish and shellfish into public waters. It is for water transfers by a water district that has certain characteristics. The district must, for instance, contribute to a water supply serving more than 1.5 million people in an area that borders another state and contains at least 10 contiguous counties; and it must undertake its transfer through a structure that is located on a reservoir on the border of Texas and another state. The only district that currently possesses all the characteristics is the North Texas Municipal Water District.

It has historically drawn as much as [28 percent](#) of its water supply from Lake Texoma, which is already infested with zebra mussels, and routed it through Lake Lavon, which is not. When the district discovered mussels in the creek connecting the two lakes, it stopped the water transfers. It began the emergency [construction](#) of a \$270 million pipeline that would bypass Lake Lavon and connect Lake Texoma directly to the district’s treatment facility. H.B. 1212 would protect this investment by absolving the district from liability under the Parks and Wildlife Code if it transports zebra mussels through the new pipeline.

### H.B. 597

The state’s prohibitions against transporting invasive aquatic species are not consistently enforced. Violators are subject to misdemeanor fines but “[because boaters are ignorant of the law . . . Texas game wardens regularly fail to distribute citations](#).” In some sense, regardless of what statute may dictate, the state must rely on the effectively voluntary actions of boaters to prevent the spread of invasive species.

H.B. 597 aims to improve boater awareness of invasive species and the role of vessel traffic in spreading them. Under existing statute, the TPWC must administer vessel safety education programs and equivalency examinations for boaters.

H.B. 597 requires that the education programs and equivalency examinations “must include information on how to prevent the spread of exotic harmful or potentially harmful aquatic plants, fish, and shellfish, including department-approved methods for cleaning: (1) a boat; (2) a boat’s motor; (3) fishing and other equipment; and (4) a boat trailer.”

### H.B. 1241

Because larvae from one waterway can latch unseen onto boats and stowaway en route to the next waterway, there are fears that in spite of the education efforts mandated by HB 597, the species may be spread through the transport of water in livewells, cooling systems, or other intake systems of boats that are operated on infested waters and subsequently operated on unaffected waters.

H.B. 1241 attempts to address such concerns by authorizing the TWPC to establish preventative regulations. These regulations may “require[e] a person leaving or approaching a public water to drain from a vessel or portable container on board the vessel any water that has been collected from or has come in contact with any public water.”

The terms “vessel” and “public water” have the meaning discussed above. The bill expressly excludes vessels in “salt water” from its scope. It defines salt water as “all coastal or tidal water.” In other words, under H.B. 1241, TPWC may not issue drainage requirements for vessels loving or approaching coastal or tidal water.

This carveout – which did not appear in the version of the bill originally introduced — shields tankers, cargo ships, and cruise ships en route to or from Gulf Coast ports like Houston and Corpus Christi. And while those ships will not help zebra mussels or other invasive species migrate through or among inland river basins, it was oceangoing vessels that brought zebra mussels ([and fire ants](#)) to the United States in the first place.

Increasing global trade is bringing with it increasing numbers of invasive species, in the form of “[accidental cargo](#) of destructive bugs and plants.” In addition to zebra mussels, high-profile aquatic species such as quagga mussels and Chinese mitten crabs have come to the country in merchant ship ballast. H.B. 1241 thus does nothing to guard against similar inclusions that could be introduced to Texas through seagoing commerce.

[invasive species](#) [Texas](#) [water](#)

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