Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 54
"Restrictions on Removal of Plant Life"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 455A.5(6), 456A.24(11), 461A.35 and 461A.41

State or federal law(s) implemented by the rulemaking: Iowa Code sections 456A.24(11), 461A.35 and 461A.4

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

September 24, 2024 1 to 2 p.m.	6200 Park Avenue, Second Floor Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Purpose and Summary

Proposed Chapter 54 governs the introduction and removal of aquatic plants in public waters and the harvest of other plants and fungi on public lands. More specifically, the chapter provides guidance on mushrooms, asparagus, fruit, American ginseng, and trees on public lands and aquatic plants under the jurisdiction of the Natural Resource Commission (Commission). This chapter has been reviewed and edited consistent with Executive Order 10.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The Department may issue permits for the introduction and removal of aquatic plants in public waters; cities and counties would incur the costs of staff time. Herbicide purchase for removal of aquatic plants is required for successful problematic aquatic vegetation control.

- Classes of persons that will benefit from the proposed rulemaking:

This chapter benefits recreational water body use by controlling the spread of nuisance aquatic vegetation.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Nuisance aquatic plant control benefits Iowans' water use by preventing the obstruction of water intake structures and promoting water recreation, access, and angling. Fishing contributes to the economy through angler purchases and travel.

- Qualitative description of impact:

Nuisance aquatic plant control provides outdoor recreation opportunities such as angling and nonconsumptive use, improving the general quality of life for Iowans.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The Department, cities, and counties incur costs for staff time. Herbicides are purchased to control aquatic vegetation and must be applied by a certified aquatic pesticide applicator.

- Anticipated effect on state revenues:

None.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

This chapter implements restrictions on the introduction and removal of plants on public lands and waters that are explicitly mandated by the Iowa Code.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

None. Herbicides and costs to become a certified aquatic pesticide applicator are fixed costs.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

None. This is a nonregulatory chapter covering restrictions for plant introductions on public lands and waters.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Not applicable.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

This chapter does not affect small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 571—Chapter 54 and adopt the following **new** chapter in lieu thereof:

CHAPTER 54
RESTRICTIONS ON REMOVAL OF PLANT LIFE

571—54.1(461A) Mushrooms and asparagus. The public may harvest mushrooms and asparagus on lands under the jurisdiction of the natural resource commission during the hours the areas are open to the public.

571—54.2(461A) Fruit. Lands under the jurisdiction of the commission shall be open for the harvesting of all varieties of nuts, fruits, and berries unless signs are posted prohibiting such activity. Nut, fruit, and berry gathering shall be permitted only during the hours the areas are open to the public and shall not be permitted in state preserves unless allowed by the preserve's management plan.

571—54.3(461A) American ginseng. The harvesting of American ginseng (Panax quinquefolius) is subject to regulation by 571—Chapter 78.

571—54.4(461A) Trees. The commercial harvest of trees from lands under the jurisdiction of the commission shall be done in accordance with 561—8.5(17A,456A,461A) and 561—8.6(455B), according to the department's Forest Ecosystem Management Guide, approved by the commission on December 8, 1994, and hereby adopted by reference.

571—54.5(461A) Aquatic plants. This rule applies to the removal of plants in public waters as those waters are defined by rule 571—13.2(455A,461A,462A). For purposes of this rule, aquatic plants include vegetation that exists at or below the ordinary high-water line of a waterway.

54.5(1) *Permits.*

a. The department may issue permits for the removal of aquatic plants in public waters. To be considered for a permit under this rule, applicants shall use the department's application form for sovereign lands construction permits, as described in 571—13.9(455A,461A,462A), and complete all relevant information on that application form. Applicants shall also provide any additional information as may be necessary, as described in 571—13.10(455A,461A). The term of the permit shall be stated in the permit. Permits are nontransferable and are subject to reevaluation upon expiration. Permits may be issued for between one and five years.

b. Cities and counties in Iowa may use chemicals, including herbicides, to remove aquatic vegetation from water intake structures. Such cities and counties shall be required to obtain a permit under this rule unless operating under a vegetation management plan approved by the director. Permits under 567—Chapter 66 may be required separately. Additionally, a certified aquatic applicator is required to conduct all such use of chemicals, and any application is subject to the terms of a vegetation management plan approved by the director. Issuance of such permits and approval of a vegetation management plan is at the sole discretion of the department.

54.5(2) *Evaluation.* The department shall evaluate all permits sought under this rule in accordance with the evaluation criteria enumerated in 571—13.6(455A,461A,462A). In addition, the department shall consider the following criteria for aquatic plant removal:

a. The plants shall be removed by hand-cutting, hand-pulling, hand-raking or mechanical cutting only;

b. The plants shall be removed to establish a designated travel lane from a boat dock that has been permitted in accordance with 571—Chapter 16. Such travel lane shall not exceed a 15-foot width, and the placement of such lane shall be subject to the review and approval of the department. A travel lane allowed under this rule may be in the same location during the term of the permit, may be sited by the department to accommodate vegetation, and may not necessarily be the most direct path from the dock to the open water area; and

c. All plant material removed under the permit must be left in place or collected and composted on the land owned, leased or otherwise subject to use by the applicant that is adjacent to the removal area.

d. Unless otherwise provided by this rule, in no event may a person be allowed to apply chemicals including, without limitation, herbicides to remove aquatic plants from public waters. For

nonpublic waters that meet certain designations in 567—Chapter 66, a person may be required to seek a permit under the rules established herein to use herbicides.

54.5(3) *Inspection requirements.* For the purpose of inspecting for compliance with permit conditions, the department shall have the right to enter the property attached to the public water at or near the place of removal. This inspection shall include, without limitation, identification of introduced species, a determination as to whether the travel lane is being maintained in accordance with the permit conditions, and whether removed plant material is left on site.

54.5(4) *Violations.* Persons in violation of this rule or who introduce aquatic plants to public waters are guilty of a simple misdemeanor as described by Iowa Code section 461A.57.

54.5(5) *Exceptions.*

a. A dock permittee whose dock meets the conditions of 571—16.4(461A,462A), 571—16.6(461A,462A), or 571—16.7(461A,462A) may remove aquatic vegetation without a permit if the aquatic vegetation:

(1) Creates a hazardous or detrimental condition in the boating area around the dock, or

(2) Covers a minimum of 75 percent of the boating area around the dock.

b. A dock permittee meeting one of the exceptions in 54.5(5)*"a"* must verify at inspection that the dock meets the criteria for a Class I, Class II or Class III dock permit and is limited to the following:

(1) Removal of vegetation in a 20-foot radius around the dock;

(2) Removal of a hazardous or detrimental condition when it interferes with safe boating passage and is located within the boating area around the dock;

(3) Creation of a 15-foot-wide boating pathway utilizing a direct route from the dock to open water;

(4) Adherence to the requirement to leave the vegetation in place or collect and compost it on land that is owned, leased or otherwise subject to use by the dock permittee and is adjacent to the removal area; and

(5) Removal of the vegetation by hand-cutting, hand-pulling, hand-raking or mechanical cutting devices, excluding automated plant control devices that disturb the bottom substrate.

These rules are intended to implement Iowa Code sections 456A.24, 461A.35, and 461A.42.