



Control of Invasive and Other Undesirable Species

Prepared by: Ethan Lauer, Staff Attorney

The term “invasive species” usually refers to any prolific and harmful nonindigenous plant, insect, or animal. If a species is native but similarly prolific and harmful, it may be known as a “nuisance species” or a “noxious species.” All of these unwanted species typically lack natural controls and may deprive desirable species of their food, habitat, or other resources. Various federal and state government entities participate in efforts to control the introduction and spread of invasive and other undesirable species.¹ This issue brief highlights several current efforts and related statutory or regulatory authority.

FEDERAL GOVERNMENT ACTIVITIES

National Invasive Species Council

The National Invasive Species Council (NISC) informs and coordinates the federal government’s efforts to control invasive species. NISC is an inter-agency council established by Presidential order, and in turn is supported by the Invasive Species Advisory Committee, an advisory committee appointed by the federal Secretary of the Interior. An example of a current NISC project is the development of a [technical paper](#) to guide federal policy for surveilling invasive species through the use of environmental DNA, which is genetic material shed by an organism into the environment in which it lives.

U.S. Army Corps of Engineers

The work of the U.S. Army Corps of Engineers (USACE) in controlling invasive species focuses mainly on aquatic species that may harm navigation, water supply, power generation, or recreation. For instance, USACE operates a series of [electric barriers](#) in the Chicago Sanitary and Ship Canal to prevent Asian carp from entering Lake Michigan through the Chicago River canal system. These large carp harm populations of native species by devouring food supplies and can even cause bodily harm to anglers by jumping out of the water at the sound of a passing motorboat.

U.S. Department of Agriculture

The U.S. Department of Agriculture (USDA) may prohibit or restrict the movement in interstate commerce of any plant, plant part, or plant article in order to prevent the dissemination of a plant pest. As an example, in 2015, USDA added [Taylor County](#) to a long list of Wisconsin counties that are regulated for gypsy moths based on an increase in population of such moths in that county. Because of this designation, interstate shipment of certain trees, tree products, and even outdoor household articles from the county is restricted.

In addition, USDA may also destroy or order destroyed any new plant pest or noxious weed² not already widespread in the country. However, USDA must compensate a party for economic losses incurred as a result of that destruction.³

STATE GOVERNMENT ACTIVITIES

DNR’s General Authority for Invasive Species

State law requires the Department of Natural Resources (DNR) to establish a statewide invasive species control program in order to cut, remove, destroy, suppress, or prevent the introduction of invasive species that are likely to cause economic or environmental harm or to harm human health.⁴

Pursuant to that directive, DNR has promulgated rules identifying invasive species and classifying them into two categories: prohibited and restricted. The prohibited category includes those species not yet appearing in the state or appearing in only a few places, and for which eradication or prevention is feasible, such as kudzu. The restricted category contains species already widely established and for which complete eradication is unlikely, such as the emerald ash borer.

Prohibited invasive species are subject to greater regulatory control. For instance, a DNR permit is required to transport, transfer, or introduce a member of either category, but a DNR permit is also required to possess a prohibited invasive species. With landowner permission or a judicial inspection warrant, DNR may inspect for and sample prohibited species on private land, and may order the owner of the land to control the species. If the owner does not comply, DNR may control the species and recover from the owner any reasonable and necessary expenses DNR incurs.⁵

DNR's Special Control of Undesirable Aquatic Species

State law requires DNR to designate by rule certain invasive aquatic plants for purposes of special controls. DNR may designate a plant if it has the ability to cause significant adverse change to desirable aquatic habitat, to significantly displace desirable aquatic vegetation, or to reduce the yield of products produced by aquaculture. Once designated, distribution of that aquatic plant is prohibited.⁶

Even in the absence of any identifiable invasive species, DNR rules require that individuals take certain preventive measures with regard to aquatic species. For instance, a person must obtain a DNR permit in order to introduce any nonnative aquatic plant into waters of the state,⁷ and must remove all attached aquatic plants and animals from a vehicle, boat, trailer, and any equipment or gear immediately upon its removal from the water.⁸

DNR and DATCP Control of Plant Pests

Under state law, DNR has authority to control forest pests, which are insects or diseases harmful, injurious, or destructive to forests or timber. DNR may establish infestation zones after public hearing (except in certain emergency situations). In an infestation zone, private forest owners must attempt eradication of the pest, including through a cost-sharing agreement with DNR. If the landowner refuses to cooperate, DNR may apply control measures and charge the owner for agency costs. Furthermore, DNR may enter public or private land for purposes of survey, investigation, or mitigation of actual, potential, incipient, or emergency infestation of forest pests, at reasonable times and without liability.⁹

To complement DNR authority, the Department of Agriculture, Trade and Consumer Protection (DATCP) may enter private property or issue orders for the removal and destruction of pests, plants, pest hosts, or pest-harboring materials. DATCP may also quarantine or restrict the importation or intrastate movement of plants in order to control pests. DATCP uses this authority, for example, to control the movement of firewood within the state.¹⁰

¹ Units of local government also possess certain authorities with regard to undesirable species. For instance, a city mayor or manager, a village president, or a town chairperson may require every person owning, occupying, or controlling land within the respective municipality to destroy all noxious weeds. [s. 66.0407 (4), Stats.]

² A “plant pest” is broadly defined to include any living thing that could injure a plant or plant product. A “noxious weed” is defined as a plant or plant product that could injure crops, livestock, poultry, irrigation, navigation, natural resources, public health, or the environment. [7 U.S.C. s. 7702 (10) and (14).]

³ 7 U.S.C. ss. 7714 and 7715.

⁴ s. 23.22, Stats.

⁵ ch. NR 40, Wis. Adm. Code.

⁶ s. 23.24, Stats.; ch. NR 109, Wis. Adm. Code.

⁷ s. 23.24 (3) (a) 1., Stats.

⁸ s. NR 40.07 (2), Wis. Adm. Code. See also s. 30.07 (2) (a) and (b), Stats.

⁹ s. 26.30, Stats. DNR administers an alternative program for suppression of gypsy moth outbreaks, including awarding federal cost-sharing funds for aerial insecticide treatment. See ss. NR 47.910 to 47.92, Wis. Adm. Code.

¹⁰ s. 94.01, Stats.; ch. ATCP 21, Wis. Adm. Code. For more information on firewood restrictions, see DATCP, [Help Protect Wisconsin Trees: Don't Move Firewood](#) (Dec. 2020).