

INVASIVE SPECIES CONTROL

A comprehensive Model State Law

Environmental Law Institute

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Model State Law Invasive Species

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INTRODUCTION

The threat posed by invasions of exotic plants, animals, pathogens and other organisms into non-native environments has begun to capture the attention of the public and the government officials that represent and serve them. Throughout the 50 states and the other territories of the United States, invasive species significantly endanger the ecological integrity of our nation's natural systems, challenge the reliability of our agricultural practices, and threaten public health and safety. Invasive species displace native plants and animals, disrupt ecological processes, threaten ecosystem stability, and alter both natural and man-made landscapes. Invasive species threaten two-thirds of all endangered species and are now considered one of the most severe threats to biodiversity in the United States, second only to habitat destruction. And the impact of invasive species comes with a substantial price tag. Federal, state and local governments all spend millions of dollars to remedy the adverse effects of species invasions while businesses, farmers, and other landowners sustain substantial economic harm. The total cost to the U.S. economy from invasive species is now estimated at well over \$100 billion annually.

Thanks to poster-worthy species, such as the northern snakehead fish, and widespread attention to other invaders such as purple loosestrife, the zebra mussel, and the Asian longhorn beetle, government authorities are quickly finding the support they need to take action. Although federal authority remains somewhat frag-

mented, states are perhaps in a better position to design and establish comprehensive programs to address the threat of species invasions and initially respond to invasions as they are discovered. Many states already have programs in place to address particular categories of threats, such as invasive plants in agricultural lands or invasive aquatic species. And recently, several states (e.g., Virginia) have passed legislation establishing interagency invasive species councils with the mission to coordinate programs and activities among the various state agencies to more comprehensively address the threat of invasive species.

A broad look at state approaches around the country reveals a variety of potential approaches and tools for states to use in combating invasive species. From defining which species will be considered invasive, to regulating the import of potentially invasive species, to early detection and rapid response programs, to the establishment of state invasive species councils, state laws and policies offer effective tools for protecting biodiversity, natural systems, agriculture, and the economy. In a recent study of state programs entitled *Halting the Invasion: State Tools for Invasive Species Management*, the Environmental Law Institute (ELI) identified at least 17 state tools for preventing, regulating, controlling and managing invasive species and for effectively enforcing and implementing their programs. By combining most or all of those 17 tools, a state could implement a very comprehensive program to manage the threat of invasive species. The model state law described in this document is one effort to do just that.

OVERVIEW

The Environmental Law Institute (ELI) has drafted the following model state law for invasive species detection, control, and management. This model state law provides the statutory framework for a comprehensive program to address invasive non-native species across all taxa. The structure of the model law is based generally on the 17 state tools for managing invasive species identified in ELI's report *Halting the Invasion: State Tools for Invasive Species Management*.

To briefly summarize, *Halting the Invasion* identified 17 state legal and policy tools for invasive species management in the following 5 categories:

PREVENTION

Over the long term, preventing the introduction and establishment of invasive species is the most effective and cost-efficient strategy. To help prevent the entry and spread of unwanted invasive species, states may develop the following prevention tools:

- Identification and mitigation of future threats (including research, data collection, and pathway identification).
- Detection (including inspection, survey, and mapping programs).
- Import/Introduction/Release requirements (including scientifically based standards for introductions and permit requirements).
- Quarantine authority (including authority for quarantines of facilities, incoming shipments, and means of conveyance).
- Education (including programs for the benefit of landowners, businesses and other stakeholders, and the public at large).

REGULATION

Some states may establish authorities to control the deliberate possession, movement, and release of certain invasive species. These authorities include:

- Permits and licenses (including permits for importation, release, and even possession of invasive species).
- Transportation and shipping requirements (including notice requirements and best practices).

- Monitoring (including post-release monitoring and reporting).
- Bonds and insurance (to ensure recovery of costs and damages resulting from permitted or accidental releases).

CONTROL AND MANAGEMENT

As a second line of defense, some states may authorize emergency control measures for rapid response to an early detection of an infestation of invasive species. Some states may also authorize programs to control, manage, and mitigate widespread infestations. State control and management strategies include the following:

- General control and management authority (including notice requirements and authority to enter private lands for control actions).
- Emergency power (to rapidly respond to newly identified or severe infestations).
- Biological controls (including standards and procedures governing the release of bio-control species).
- Restoration (to help restore areas where invasives have been controlled and to prevent other infestations).

ENFORCEMENT AND IMPLEMENTATION

Adequate enforcement authority and resources are essential to effective implementation of invasive species programs. States may utilize the following tools:

- Enforcement authorities (including administrative and criminal penalties).
- Funding (including dedicated funding sources).

COORDINATION

States are better equipped to implement and enforce existing authorities and tools aimed at the prevention, control, and management of invasive species if they coordinate their use through two fundamental tools:

- Invasive Species Council
- Invasive Species Management Plan

To create this model law, ELI has selected, adapted, and blended provisions from some of the best existing state programs across the country in order to describe a program that incorporates all the basic elements of the 17 tools described in *Halting the Invasion*. The comprehensive state invasive species program outlined in the model law includes the creation of a statewide, interagency invasive species council responsible for planning statewide invasive species management, for developing and maintaining comprehensive species lists, and for exercising regulatory authority to implement the programs described in

the statute. The model law includes provisions designed to prevent species invasions (including threat and pathway assessment, detection programs, import controls, pathway regulation, and quarantines), regulatory provisions (including permitting and monitoring), invasive species control provisions (including general authorities and emergency response) and enforcement provisions. The model law is intended both to stand alone as a comprehensive program and to be readily separable into its component parts for adoption into an existing state legislative framework.

HOW TO USE THIS MODEL LAW

This model law builds on ELI's *Halting the Invasion* report by constructing a comprehensive statutory framework for a program to address invasive species prevention, regulation, management and control, enforcement and implementation, and interagency coordination. Most states already have some laws and regulations in place to address invasive species. Both *Halting the Invasion* and this model law are intended to help states fill in the gaps between their existing laws and regulations to create a more comprehensive program to address invasive species. Although the model is designed to work as a single unit, it is expected that in many jurisdictions only select portions of the model may be needed. The model goes into some detail on a framework for statewide process and procedure, but stays away from detailed provisions addressing specific pathways, species, or even taxa, as these issues will vary greatly from state to state. Thus, the model avoids detailed provisions relating, for example, to practices affecting the movement of aquatic invasive species, such as the cleaning and maintenance of private boats and watercraft. The model instead includes provisions authorizing the development of regulations that would describe pathway-specific, species-specific, or taxa-specific prohibitions on activities or requirements for best management practices. The model also avoids specifying the details of relationships and/or cooperation between state and local government entities because, again, these relationships will vary greatly from state to state.

The model law incorporates the 17 tools described in *Halting the Invasion*, but not necessarily in the order described in that report. The model law also, where appropriate, combines elements of the 17 tools to provide a more workable or efficient regulatory mechanism. The structure of the resulting statute is, nevertheless, similar to the structure of the *Halting the Invasion* report:

Model Law – Invasive Non-Native Species

Legislative Findings.

Chapter 1 – General Provisions: including purpose and definitions.

Chapter 2 – Interagency Coordination and Planning: including the establishment of an invasive species council and an invasive species management plan.

Chapter 3 – Classification and Listing of Non-Native and Invasive Species: including the establishment of lists of prohibited, restricted, regulated and unregulated species.

Chapter 4 – Prohibited Acts: including the prohibition of possession, importation, and release of certain listed species and other actions, including, under some circumstances, the unintentional import or release of species as a result of other actions.

Chapter 5 – Prevention of Non-Native Species Invasions: including threat and pathway identification and detection programs as well as pathway, import and introduction restrictions, seizures, quarantines and an education program.

Chapter 6 – Permitting Programs: including requirements for individual permits for possession, importation and release, as well as facility permits and permits for transporting invasive species.

Chapter 7 – Control and Management of Invasive Species: including provision addressing general and emergency control authority, liability for response costs, biological controls, and restoration.

Chapter 8 – Enforcement and Implementation: including provisions establishing administrative and criminal penalties and creating a dedicated invasive species management fund.

The sections below discuss some of the highlights of the model law, identify some of the state provisions that served as the patterns for the model, and explain some of the choices that were made in the drafting process.

DEFINING INVASIVE SPECIES

The first step in describing a comprehensive invasive species program is to define what is meant by the term “invasive species.” In the model law, invasive species are defined as non-native species whose introduction or proliferation causes (or is likely to cause) economic or environmental harm or harm to human health or safety. The core elements of this definition resemble the federal definition of invasive species adopted by the National Invasive Species Council in its national invasive species management plan (excerpted below). It is important to note that

the definition is not tied to any particular set of taxonomic categories. The more broadly a state defines the categories of species subject to the law, the greater leeway allowed to address all taxa of invasive species. This model law defines invasive species as broadly as possible to ensure that the provisions outlined here can be used to address all types of invasive species, as well as impacts of invasives not only to agriculture, forestry, and other economic sectors, but to natural areas and native biodiversity. This definition is similar to the definition adopted by the state of New Hampshire.

DEFINING THE WORLD OF SPECIES TO BE EXAMINED

In addition to defining what species are considered invasive, a state must describe the world of species at which it will look to check for invasive species. Generally, that will be the world of non-native species—species that are not naturally occurring in any ecosystem in the state. States must also consider, however, that some species may be native to some ecosystems in the state but be non-native or invasive in other ecosystems in the state.

THE ROLE OF THE INVASIVE SPECIES COUNCIL

The Invasive Species Council established in the model law consists of the directors or designees of the various state resource agencies, state universities, and appointees representing the regulated community and the public. The Council has a Director appointed by the Governor with the advice and consent of the Council members. The Council has cross-cutting authority over all pathways and taxa of invasive species and is responsible for developing a statewide plan to prevent, control, and manage invasive species.

As described below, the model law takes the unusual step of vesting primary regulatory authority with the interagency Invasive Species Council. The Council also has the authority to delegate, upon agreement with the appropriate agency, the Council's responsibilities for particular activities to a member agency with appropriate expertise. The Council retains primary oversight authority with the delegated agencies acting as the Council's agents. The law could also be readily adapted to vest primary authority for different activities with an agency with existing expertise. In such a structure, the Council could retain some oversight and coordination authority to ensure consistency throughout the program.

REGULATORY AUTHORITY OF COUNCIL AND STATE RESOURCE AGENCIES

The *Halting the Invasion* report recommends the creation of a State Invasive Species Council to (1) coordinate the actions of all state agencies whose activities affect invasive species, (2) establish an invasive species management plan, and (3) ensure a comprehensive approach to invasive species across all taxa. The model law follows this example and additionally makes the Council responsible for establishing and maintaining lists of non-native species that are and are not regulated. This is a limited regulatory role that is well suited to the interagency Council.

The model law as presented here takes the Council's duties a significant step further by establishing primary regulatory authority for invasive species in the Council itself. This authority is reflected in Section 2.04(b) and throughout the model law by naming the Council or its Director as the agency responsible for each of the regulatory program elements.

To complement this added authority, the Council is then further authorized to delegate its regulatory responsibilities to existing departments or agencies with relevant expertise or administrative capacity (See Section 2.04(d)). The Council, however, retains the primary responsibility for the program or activity. This approach allows a state to take advantage of existing programs and expertise while still establishing a definitive central authority to ensure a consistent and comprehensive approach to invasive species management. Such an approach, where one agency has primary oversight authority over another agency or agencies with primary responsibility for implementation is not without precedent. Examples include the oversight of the U.S. Environmental Protection Agency over the U.S. Army Corps of Engineers' implementation of Section 404 wetlands permitting under the federal Clean Water Act or the delegation of authority from a state environmental agency to a conservation district for certain permitting decisions or other activities.

The authors recognize that the vesting of regulatory authority in the Council is an unusual approach that grants considerable authority to a multi-agency council. However, many examples can be found. Consider, for example, a multi-state/multi-agency river basin commission with regulatory authority over water withdrawals or discharges. Nevertheless, if a state were not able or inclined to provide their Invasive Species Council with this additional authority and responsibility, it could simply omit the relevant grant of regulatory authority to the Council and name an existing state agency or agencies as the lead authority for the various program elements. The Council would continue to provide essential planning and

coordination as well as species classification and listing functions.

CLASSIFYING, LISTING, AND REGULATING INVASIVE SPECIES

CLASSIFICATIONS, PROHIBITIONS, AND PERMITS

The basic scheme in Chapter 3 for classifying and listing non-native species as prohibited, restricted, regulated or unregulated, along with the provisions of Chapter 4 prohibiting certain activities with these classifications of species without a permit and the associated permitting provisions in Chapter 6, derive primarily from provisions of Minnesota's natural resources laws that apply similar classifications and restrictions to wild animal and aquatic species. The model law builds on these provisions to apply the classification, listing, and permitting provisions to all taxa.

LISTING PROCESS

The model law suggests an administrative rule-making process for the establishment of lists of prohibited, restricted, regulated, and unregulated species, and for the subsequent assessment of unlisted species and the addition of such species to the appropriate list. This is to ensure that listing decisions are made based on adequate scientific information and with adequate public notice and opportunity for comment. In some states, however, that process may be sufficiently time consuming so as to create a problem in circumstances where a more timely decision is needed. So long as the need for a quick decision is not needlessly created by the action or inaction of the person seeking the decision, a state may want to consider making available a new or established "emergency" or "interim" rule-making process to make expedited decisions where appropriate.

PROHIBITED, RESTRICTED, AND REGULATED INVASIVE SPECIES

It was the original intent in drafting the model law to create essentially a two-tier approach to classifying invasive species—*prohibited* invasive species that were so undesirable that they could not even be possessed in the state without a permit, and *regulated* invasive species that, while undesirable, did not have such a serious potential impact that it was necessary to prohibit even their presence or possession in the state but rather simply prohibiting their introduction (release) without a permit was adequate. However, it was recognized that there were likely to be some species that, while undoubtedly highly undesirable,

had already established populations or infestations in the state. Where a species had established itself on, for example, the extensive private lands of a farmer, forest landowner or rancher, it would be unreasonable to prohibit or penalize mere possession of the species by an innocent landowner. (Purple loosestrife or cheat grass could be examples of such species.) Thus, the classification of restricted invasive species was established for such species—species that the state would like to prohibit and remove from the state entirely, but which have significant known populations or infestations already in the state. All the same prohibitions and permit requirements applicable to a prohibited species apply to a restricted species except the prohibition on possession. It is important to note that regardless of the classification on the invasive species (prohibited, restricted or even regulated) the state always has, under the control and management provisions of the model law, authority to order a landowner to undertake reasonable control or eradication measures and authority to undertake such measures itself on private lands.

CLEAN LISTS AND DIRTY LISTS

There are two fundamental approaches to regulating invasive species. One is to list all the species that are identified as invasive or harmful and prevent their introduction or proliferation. This is termed a dirty list. While a dirty list approach is fairly simple to administer, it may permit the introduction of species not on the list that turn out to be a problem, and it puts the burden on state regulators to prove a species should be regulated. The other approach is to list all species that may be introduced or proliferated without restriction. This is termed a clean list approach. The advantage to a clean list approach is that it will better prevent introductions of species whose characteristics are unknown and which could be invasive. This approach also puts the burden on those who wish to import, introduce or otherwise handle non-native species to demonstrate that the species are not invasive. This model law combines the two approaches. There is a dirty list that identifies prohibited, restricted or regulated invasive species. There is also a clean list from which species may be freely imported and proliferated. All other species are considered unlisted and must be prescreened and approved before introduction or proliferation.

PREVENTING INVASIONS

BLOCKING UNINTENTIONAL PATHWAYS OF INVASION

Controlling the deliberate import and introduction of species that are or may be invasive is clearly an important element of a comprehensive invasive species program.

Equally important, if not more so, is preventing the unintended import, introduction, and spread of invasive species as the result of other activities (pathways), including the import or movement of goods, materials or even other benign species. For example, damaging non-native species can enter a state in the form of internal or external parasites, pathogens or hitchhikers attached to approved plant or animal imports. They can enter as seeds, insects or pathogens in potting material, animal bedding, water or packaging materials (including solid wood crates or pallets, cages, wet seaweed, and other materials). They can enter a state in, or attached to, trucks, railroad cars, boats, and boat trailers. Such pathways are numerous and diverse, and they can vary significantly from region to region and state to state. Furthermore, they are not adequately addressed by the screening processes designed to protect against species that are brought into the state by design. To address this problem, the model law initially defines the concept of a “pathway” and the concept of “unintentional” import, introduction, and spread of species through those pathways. The model law then, in Chapter 5 (Prevention of Non-Native Species Invasions), suggests a methodical approach to the problem by providing that the state will first identify and evaluate its own unique set of potential pathways for introduction (see Section 5.01) and then develop reasonable and appropriate methods for curtailing the risk of unintended introductions through those pathways (see Section 5.04).

MANAGING INVASIVE SPECIES

MANAGEMENT AND CONTROL RESPONSIBILITIES

The model law provides authority for a state to require landowners to take action to control invasive species on their property or for the state to take direct action to control invasives on private property and, if necessary, subsequently to seek cost recovery from the responsible landowner in appropriate circumstances. As with many elements of the model, these provisions were derived from similar provisions in existing state law. The Minnesota Noxious Weed Law provides the state with authority to require landowners to control invasive plant species or to enter upon the land to control invasive species if the landowner does not comply. The Minnesota law also provides for the service of individual notice to landowners to undertake control measures and, absent a response, establishes liability for state control costs with the landowner. An exception is made for invasions that are below the ordinary high water mark of state waters that cross or border private land (although state authorities are entitled to cross private land as needed to access such waters and infestations). The model law adopts

these concepts and applies them to all taxa of invasive species.

USE OF BIOLOGICAL CONTROL AGENTS

While the use of biological control agents is an essential tool in the control and management of established infestations of invasive species, it is important to ensure that the control agents themselves do not become problematic invasive species when released. It is important both scientifically and politically that the release of potentially invasive species as biological control agents be subject to largely the same scientific rationale and social balancing as the release of other species. It may be that the risk of using them is, however, more frequently offset by the large public benefit of controlling an existing invasion than is the case when the introduction is for aesthetic reasons or private economic benefit. Vermont and Florida both have provisions that restrict the use of biological control agents without a permit issued by the state. These provisions were used to develop the model language. Vermont focuses on the protection of water quality by restricting the use of a variety of control agents, including biological controls, to control nuisance aquatic species. Florida has a more general provision prohibiting the introduction of organisms that may directly or indirectly affect plant life without a permit. The model law provision applies to all taxa, not just plants or aquatic species.

ENFORCEMENT AND FUNDING

Enforcement is, of course, an important element of any comprehensive invasive species program. Without meaningful consequences for non-compliance, there is little incentive to comply with the laws. In particular, stiff administrative and criminal penalties are essential to discourage the continued large scale commercial importation of invasive species or the failure to take appropriate actions to prevent unintended introductions through commercial activity. In fashioning enforcement mechanisms, the state should also be sensitive to the lack of sophisticated knowledge of species on the part of a typical citizen. The full weight of criminal or civil liability should not come crashing down on someone who innocently brought home a house plant from his family in another state or who innocently stocked her first aquarium with an exotic fish, only to discover that the species in question was a prohibited invasive species. A state may want to create a special exemption for a first time offender, for example, who obtained the specimen in question for his or her own personal use, unless it can be shown that the individual had actual knowledge that the activity was illegal.

BONDING AND LIABILITY PROVISIONS

Actions to control and manage invasive species that have escaped and infested natural and man-made systems are very costly to states. For example, the aquatic plant hydrilla was introduced into Florida waterways in the 1950s by people discarding tropical aquarium plants. Now the species costs the state millions of dollars in control costs and lost recreational revenues annually. To provide protection against this type of potential economic burden, at least six states have begun to require the payment of a bond (as provided in the model law) or demonstration of liability insurance in order to possess specified invasive species. In addition, the model law includes a provision establishing liability for the cost of controlling an introduced invasive species—absolute liability if the species is a prohibited invasive species and conditional liability, based on whether the potentially liable party was in compliance with a properly issued permit, for introductions of regulated invasive species. Minnesota was the example used for developing the model text.

LONG-TERM FUNDING

Without ample funding, all the important activities and goals set forth in the previous sections of the model law will be impossible to implement or accomplish. While legislative appropriations are essential, particularly

to establish the base for a comprehensive program, the long-term viability of a program is improved by diversifying funding sources. User fees can be an effective way to establish a consistent funding source and ensure that some of the costs associated with protecting against species invasions are borne by the businesses or individuals whose activities carry the greatest risk of introducing invasive species. User fees can be politically difficult to establish, however, where there are well organized user or industry groups who oppose the fee. The use of a dedicated invasive species fund can be another useful tool to ensure adequate funding for invasive species control and other activities. While the existence of a dedicated fund does not guarantee funding, it does allow the responsible agency to set aside a reserve of funds for specific invasive species activities. For example, if the agency had to request additional funding from the legislature to undertake action to control a newly discovered infestation, the delay in receiving such funding could significantly hamper control efforts. The ability to quickly tap a dedicated fund for emergency or rapid response actions can make the difference in whether a new infestation spreads or is contained. In general, the need for control activities may vary considerably from year to year depending on climatic conditions, and the existence of a fund that is grown and carried over from year to year can help provide the flexibility to meet that need every year.

MODEL STATE LAW

INVASIVE SPECIES

TITLE _____ – INVASIVE NON-NATIVE SPECIES

LEGISLATIVE FINDINGS:

States should develop findings appropriate to their unique problems and needs. General areas or topics may include:

- environmental impacts of invasive species including habitat loss and adverse impacts to native biodiversity;
- impacts to economic activity including impacts to agriculture, forestry, commercial and recreational fisheries, aquaculture, urban and suburban environments and plantings, hunting, and other recreational activities;
- impacts to infrastructure including impacts to ports, shipping and utilities, impacts to other modes of transportation and to structures;
- impacts to private property and property values;
- impacts to public health and safety;
- intentional and unintentional pathways for non-native species invasion;
- statewide control and response costs; and,
- rates of new introductions of invasive species.

CHAPTER 1 – GENERAL PROVISIONS

1.01 Declaration of Purpose.

The purpose of this Title is to recognize the adverse environmental, economic, and human impacts upon this state of all invasive non-native taxa, including, without limitation: terrestrial or aquatic species of wildlife; plants and their seeds; insects and other invertebrates; fungal species; plant pests, pathogens and diseases; and animal pests, pathogens and diseases (including human pests, pathogens and diseases). It is further the purpose of this Title to establish the means by which the state shall address and minimize such adverse effects; to promote research and educational activities dealing with invasive species so as to achieve the best possible protection of agricultural land, forests, wildlife, natural areas, native biodiversity, and other natural resources of the state and of human health and safety; and to prevent and control the spread of invasive species in the state.

1.02 Definitions.

“Article” means any tangible object or substance and as used herein may include plant or animal organisms, living or dead, including organisms intended for food, pets, or other purposes.

“Biological controls” mean living multi- or uni-cellular organisms used to control or suppress populations of pest species.

“Control” means to stop the growth in number or size, to prevent the maturation and spread, and/or to reduce the number of a species or the population of a species in an ecosystem.

“Council” or “Invasive Species Council” means the Council created under Section 2.01 of this Title and includes the Director and all officers, employees, agents, and contractors of that Council.

“Economic harm” means adverse impact on a person’s property or business, on public property or business, or on the economy of a community, region or the state as a whole.

“Ecosystem” means a unit of biological organization that encompasses a community of organisms and their physical environment.

“Environmental harm” includes harm to biodiversity, ecological processes, natural resources or their use in the state, including, without limitation, harm to state or federal threatened or endangered species or their habitat.

“Eradicate” means to kill, destroy, remove and prevent the further growth or reproduction of a species or population in an ecosystem.

“Facility” means a site or location with permanent enclosures, cages or exhibit areas, natural or man-made bodies of water, or other structures or devices used to contain non-native invasive species or specimens, located on premises owned or leased by a person.

“Herbarium” (plural: “herbaria”) means a collection of preserved plant and/or fungal specimens maintained for scientific purposes.

“Import” means to bring into the state from another state or country.

“Introduction” or “introduce[d]” means the release, escape, dissemination, establishment or placement of a species into an ecosystem outside of its natural range as a result of human activity or failure to act.

“Invasion” means the introduction and establishment of a new population of invasive species.

“Invasive species” means a non-native species, including the seeds, eggs, or spores thereof or other biological material, capable of spread, reproduction or propagation, whose introduction or proliferation causes or is likely to cause economic or environmental harm or harm to human health or safety. For purposes of this title, prohibited invasive species, restricted invasive species, and regulated invasive species are, individually and collectively, considered invasive species. Invasive species do not include species of plants or animal identified by statute as commodity crops or livestock.

“Means of conveyance” means any tangible object, used to move other tangible objects, persons, or species, by means of which a species or specimen could move from one place to another. The term includes, without limitation, automobiles, trucks, busses, motorcycles, other vehicles of any kind, bicycles, boats, barges, ships, other vessels of any kind, trailers, containers, rail cars, aircraft, pipelines or roads.

“Native species” means species that are naturally occurring in an ecosystem or which were naturally occurring in an ecosystem prior to human activity that resulted in the reduction or loss of such species.

“Non-native species” means species that are not naturally occurring in an ecosystem but capable of living and reproducing in the wild without continued human agency, including invasive species. Non-native species may include genetically modified native species.

“Pathway” means the method, means or opportunity by which species are transported from one location to another and may include but is not limited to any commercial, industrial, personal or other activity, facility, or process, or any means of conveyance or other equipment or item involved in such activity, that presents an opportunity for the import, introduction or spread of a species.

“Person” means any natural person, corporation, association, partnership or other legal entity including units of federal, state, and local government, unless otherwise restricted by law.

“Prohibited invasive species” means non-native species identified and designated as prohibited invasive species under Chapter 3 of this Title. Typically, prohibited invasive species will be highly undesirable invasive species that are not known to be present in the state to any significant degree.

“Proliferate” means to grow in number, multiply or spread, or to cause or allow, by action or failure to take reasonable action, a species or specimen to grow in number, multiply or spread.

“Propagate” means to cause a species or specimen to continue, reproduce, breed or multiply by generation, or by successive production.

“Public lands” means lands belonging to the federal government or to the state or a political subdivision thereof, except for areas subject to exclusive federal jurisdiction.

“Regulated invasive species” means non-native species identified and designated as regulated invasive species under Chapter 3 of this Title. Typically, regulated invasive species will be moderately undesirable invasive species that may or may not be present in the state to a significant degree.

“Restricted invasive species” means non-native species identified and designated as restricted species under Chapter 3 of this Title. Typically, restricted invasive species will be highly undesirable invasive species that are known to have populations already established in the state.

“Species” means a class of individuals comprising related organisms or populations, having common attributes, potentially capable of interbreeding. For purposes of this Title, the term species includes organisms from any and all taxonomic classifications without limitation.

“Specimen” means an individual plant, animal, aquatic plant or animal, plant pest sample, disease culture, pathogen, insect or invertebrate, including the seeds, eggs, or spores thereof or other biological material, capable of spread, reproduction or propagation. For purposes of this Title, and particularly with respect to smaller species, a specimen may mean a small number of individuals sufficient to accomplish the purposes for which the species is needed or desired.

“Unintentional” when used in this Title with reference to the import, introduction, transport or spread of species means the import, introduction, transport or spread of species incidental to another activity, including, without limitation, the import, introduction, transport or spread of another species, or through pathways associated with the movement of goods, materials, or other articles in commerce and with the movement of any means of conveyance, or any other identified pathway for species invasion.

CHAPTER 2 – INTERAGENCY COORDINATION AND PLANNING

2.01 [State] Invasive Species Council established.

(a) There is established the [State] Invasive Species Council to advise the Governor and state agencies on matters relating to invasive species in the state and to directly manage the prevention, regulation, and control of non-native and invasive species. The Council shall consist of 14 members *[adjust as appropriate]*.

(b) Ex officio voting members of the Council shall be:

- (1) The Secretary of the State Department of Agriculture or a designated representative.
- (2) The Secretary of the State Department of Environment or a designated representative.
- (3) The Secretary of the State Department of Natural Resources or a designated representative.
- (4) The Director of the State Fish and Wildlife Agency or a designated representative.
- (5) The Director of the State Forestry Agency or a designated representative.
- (6) The Secretary of the State Department of Transportation or a designated representative.
- (7) The president of the State Land Grant University or a designated representative.
- (8) The administrative head of the Sea Grant College of State University or a designated representative.

[Other ex officio members may be listed as appropriate (e.g., Health Department, Recreation Agency).]

(c) Appointed voting members of the Council shall be appointed by the Governor as follows:

- (1) Two appointed members shall represent agricultural and horticultural industries,
- (2) Two appointed members shall represent environmental and conservation interests,
- (3) One appointed member shall represent the pet and/or aquarium industry, and
- (4) One appointed member shall represent the port and/or shipping industry.

(d) The Council shall include, as non-voting members, the designated representatives of federal agencies with an interest and involvement in invasive species prevention, control and management in the state. Such members shall be designated at the discretion of the Governor upon nomination by the federal agencies.

2.02 Council practice and procedure.

(a) The committee shall, once every three years, choose one of its ex officio members to serve as chairperson.

(b) The term of office of each appointed member is three years (except as necessary to establish staggered terms as required below). Before the expiration of a term, the Governor shall appoint a successor whose term begins on January 1 of the following year. Members may be appointed for consecutive terms. Terms shall be staggered so that only one-third of the appointed members shall be up for re-appointment in any single year.

- (c) At the discretion of the Council, appointed members may be reimbursed from funds available to the Council for actual and necessary travel and other expenses incurred by members of the Council in the performance of their official duties, subject to the limits prescribed by law.
- (d) A majority of the voting members of the council constitutes a quorum for the transaction of business, provided that there are at least 5 ex officio member in such a quorum.
- (e) The Council shall meet at least quarterly in public session.

2.03 Director.

- (a) The Governor shall appoint, with the advice and consent of the Council, a Director of the [State] Invasive Species Council with authority to administer and implement the powers and duties of the Council as described in this Title.
- (b) The Director shall submit a budget and hire such staff as are necessary to undertake the responsibilities of the Council under this Title.
- (c) The Council Director and the Council staff shall be housed within an agency determined by the Governor, with the advice and consent of the Council. *[Alternatively, the statute may specify the agency to house the Council Director and staff.]*

2.04 Powers and Duties of the Council.

- (a) General Authority. The Council may adopt such regulations, rules and procedures as are reasonably necessary to carry out the provisions of this Title. Rules shall be adopted by the Council pursuant to the standards and procedures set forth in [the state administrative code]. Such authority shall include, without limitation, authority to adopt the plan required in Section 2.05 and to establish the lists required under Chapter 3.
- (b) Regulatory Authority. The Council shall have such power and authority as required to fulfill the regulatory requirements of this Title including, without limitation, the following powers and duties:
 - (1) the authority to enter and inspect any premises as necessary to carry out the provisions of this Title;
 - (2) the authority to establish border check stations at points of entry to the state or other facilities necessary to carry out the provisions of this Title;
 - (3) the authority to seize or destroy non-native or invasive species from public or private ownership or control as necessary to carry out the provisions of this Title;
 - (4) the authority to conduct studies, undertake research and engage in monitoring or tracking activities as the Council deems necessary to fulfill its responsibilities under this Title; and
 - (5) the authority to develop and implement rules establishing appropriate and reasonable administrative enforcement mechanisms to enforce compliance with the provisions and requirements of this Title. Such administrative enforcement mechanisms may include, without limitation, investigation and information collection, notices of violations, permit revocation, administrative hearings and injunctions, and fines, not to exceed the criminal fines established in Chapter 8 of this Title.

(c) **Additional Authority.** In addition to any other duties established under this Title, the Council is further authorized to engage in the following activities:

- (1) create and maintain appropriate Internet sites, toll-free telephone numbers or other means of communication for statewide use in reporting sightings of invasive species and encourage the reporting of invasive species sightings by publicizing means of communication made available by the Council;
- (2) produce educational materials and press releases concerning invasive species, and conduct educational meetings and conferences;
- (3) solicit proposals, review applications, and make grants or loans to further projects providing education about invasive species;
- (4) solicit proposals, review applications, and make grants or loans to agencies, organizations or individuals for activities related to the detection, prevention, control, management or eradication of invasive species or for the restoration of native species; and,
- (5) apply for and receive grants from government agencies, public or private foundations or other sources to support the activities authorized in this Title.

(d) **Delegation Authority.** The Council shall have the authority to delegate selected and clearly identified elements of its authorities and duties to another agency of the state with appropriate expertise or administrative capacity upon mutual agreement with that agency. Such agency will act as agent of the Council in implementing the delegated authority or duty. The Council is authorized to enter into memoranda of agreement with other state agencies to implement the delegations authorized in this subsection. The Council shall retain primary authority and responsibility for all requirements of this Title unless otherwise directed herein.

2.05 Invasive Species Management Plan.

- (a) The Council shall develop and periodically update a statewide strategic plan for addressing invasive species. The plan shall be updated at least once every five years following its initial development. The Council shall complete the first plan within two years of the effective date of this Title.
- (b) The plan shall include a review of state authority and resources, including agency budgets, available to detect, monitor, and prevent the introduction of invasive species; to rapidly respond to newly identified invasions; and to eradicate, control, contain or manage existing populations of invasive species. The Council shall take into account any existing state agency plans for managing noxious weeds or other invasive species, as well as the plans, programs, and recommendations of existing entities addressing invasive species. The plan may be coordinated or integrated with the program of study and evaluation described in Section 5.01 of this Title (Threat identification) and with the mapping and listing activities described in Section 5.02 of this Title (Detection programs).
- (c) The plan shall set forth a framework for a comprehensive and efficient state program to combat invasive species in coordination with federal, local, tribal, and private entities. The plan shall include recommendations for administrative and legislative actions and standards for measuring the success of state departments and agencies in meeting the purposes of this Title. The strategic plan is intended as a guidance document and may call for actions by local, state, federal or tribal entities. The strategic plan shall not have the force of law.
- (d) The plan shall address, without limitation, the following elements:
- (1) statewide coordination and intergovernmental cooperation;

- (2) prevention of new biological invasions through deliberate import or introduction or through unintentional pathways;
- (3) inventory and monitoring of invasive species;
- (4) early detection of and rapid response to new invasions;
- (5) control, management, and eradication of established populations of invasive species;
- (6) restoration of native species following control or eradication of invasive species;
- (7) public education;
- (8) research; and
- (9) funding and resources available for invasive species prevention, control and management.

(e) Each state department and agency named to the Council shall conduct an evaluation of its current statutory authorities, rules, and programs relevant to invasive species control and make such evaluation available to the Council within one year of the effective date of this Title. This evaluation shall identify opportunities to incorporate invasive species control into agency operations, clarify authorities, eliminate duplication among agency efforts, find efficiencies, and identify gaps in state invasive species programs.

(f) Each state department and agency named to the Council shall, consistent with state law, make best efforts to the implement elements of the completed plan that are applicable to such department or agency.

2.06 Invasive Species Advisory Committee.

- (a) The Council, upon public notice, shall appoint an Invasive Species Advisory Committee.
- (b) The Committee shall consist of individuals with significant expertise in fields relevant to non-native and invasive species ecology, identification, impacts, management, and control. The number and makeup of the Committee shall be determined by the Council and shall be a balanced group representing state agencies, regulated and benefited industries, environmental and conservation interests, academia and the scientific community, and the general public.
- (c) The Council shall establish practices and procedures governing the appointment and reappointment of members, the holding of meetings, and the provision advice to the Council. At the discretion of the Council, members of the Committee may be reimbursed from funds available to the Council for actual and necessary travel and other expenses incurred by members of the Committee in the performance of their official duties, subject to the limits prescribed by law.

CHAPTER 3 – CLASSIFICATION AND LISTING OF NON-NATIVE AND INVASIVE SPECIES

3.01 Classifications and lists established.

(a) The Council shall, in consultation with the Invasive Species Advisory Committee, and as provided in this chapter, classify non-native and invasive species according to the following categories:

- (1) prohibited invasive species, which may not be possessed, imported, exported, purchased, sold, bartered, distributed, propagated, transported or introduced except as provided in Section 4.01;
- (2) restricted invasive species, which may not be imported, exported, purchased, sold, bartered, distributed, propagated, transported or introduced except as provided in Section 4.01;
- (3) regulated invasive species, which may not be introduced or imported except as provided in Section 4.02; and,
- (4) unregulated non-native species, which are not subject to further regulation under this Title.

(b) The Council shall establish and maintain lists of prohibited invasive species, restricted invasive species, regulated invasive species, and unregulated non-native species. The establishment of such lists and any additions, removals or other changes thereto shall be made by rule and pursuant to the standards and procedures set forth in Sections 3.02 and 3.03, in any other applicable provision of this Title, and in the state administrative code.

(c) Unlisted non-native species, which may not be introduced or imported as specified in Section 4.04 of this Title, are non-native species that have not yet been classified by the Council as prohibited, restricted or regulated invasive species or unregulated non-native species. Unlisted non-native species are subject to the classification procedure in Section 3.02 of this Title.

(d) Within one year of the effective date of this Title, the Council shall promulgate the initial lists of prohibited invasive species, restricted invasive species, regulated invasive species, and unregulated non-native species. Additional listings shall be made on an as needed basis.

3.02 Classification and listing process.

(a) If the Council determines that a species for which a notification is received under Section 4.04 of this Title, for which a petition is received under this Section, or which otherwise is brought to the Council's attention should be classified as a prohibited invasive species, the Council shall:

- (1) adopt a rule designating the species as a prohibited invasive species and add such species to the appropriate list under Section 3.01(b);
- (2) notify the person who submitted the notification or petition of the Council's determination and that the species is subject to Section 4.01 of this Title; and,
- (3) provide notice to the public that the species has been listed as a prohibited invasive species and that it may not be possessed, imported, exported, purchased, sold, bartered, distributed, propagated, transported or introduced except as provided in Section 4.01 of this Title, and provide instructions for proper disposition of such species currently within the state.

(b) If the Council determines that a species for which a notification is received under Section 4.04 of this Title, for which a petition is received under this Section, or which otherwise is brought to the Council's attention should be classified as a restricted invasive species, the Council shall:

- (1) adopt a rule designating the species as a restricted invasive species and add such species to the appropriate list under Section 3.01(b);
- (2) notify the person who submitted the notification or petition of the Council's determination and that the species is subject to Section 4.01 of this Title; and,
- (3) provide notice to the public that the species has been listed as a restricted invasive species and that it may not be imported, exported, purchased, sold, bartered, distributed, propagated, transported or introduced except as provided in Section 4.01 of this Title, and provide instructions for proper disposition of such species currently within the state.

(c) If the Council determines that a species for which a notification is received under Section 4.04 of this Title, for which a petition is received under this Section, or which otherwise is brought to the Council's attention should be classified as a regulated invasive species, the Council shall:

- (1) adopt a rule designating the species as a regulated invasive species and add such species to the appropriate list under Section 3.01(b);
- (2) notify the person who submitted the notification or petition of the Council's determination and that the species is subject to Section 4.02 of this Title; and,
- (3) provide notice to the public that the species has been listed as a regulated invasive species and that it may not be introduced except as provided in Section 4.02 of this Title.

(d) If the Council determines that a species for which a notification is received under Section 4.04 of this Title, for which a petition is received under this Section, or which otherwise is brought to the Council's attention should be classified as an unregulated non-native species, the Council shall:

- (1) adopt a rule designating the species as an unregulated species and add such species to the appropriate list under Section 3.01(b);
- (2) notify the person who submitted the notification or petition of the Council's determination and that the species is not subject to regulation under this Title as provided in Section 4.03; and,
- (3) provide notice to the public that the species has been listed as an unregulated non-native species.

(e) Any person may petition the Council to classify and list an unlisted non-native species, or to remove or otherwise change the classification of an already listed species, in such a manner as the Council shall establish by rule. Such petition may be accompanied by information relevant and helpful to the Council in making a determination under this Section. The Council will act on such a petition in a timely manner. The Council may prioritize its determinations as appropriate to quickly and efficiently address the most urgent classification and listing matters.

(f) Public notice of the determinations of the Council regarding the classification and listing of non-native species shall include an explanation of the rationale for the decision with reference to the requirements of Section 303.

3.03 Consultation and Criteria.

(a) The Council shall consult with the Invasive Species Advisory Committee in determining whether and how to classify non-native species.

- (b) The Council shall consider the following criteria in classifying a non-native species under this chapter:
- (1) whether the species is likely to be injurious to, or whether the species is otherwise likely to cause economic or environmental harm or harm to human health or safety;
 - (2) the magnitude of the potential adverse impact of the species on public health or safety, the environment, public roads, crops, livestock, forest resources, natural areas and native biodiversity, state or federal threatened or endangered species, waterways or water bodies, real or personal property, outdoor recreation, commercial or recreational fishing, or any other use of the state's natural resources or any other adverse impact identified by the Council;
 - (3) the likelihood of introduction of the species if it is allowed to enter or exist in the state;
 - (4) the likelihood that the species would naturalize in the state if introduced;
 - (5) the ability to eradicate or control the spread of the species if introduced in the state.
 - (6) whether and to what extent the species is now present in the state and the difficulty of controlling or eradicating existing specimens, populations or infestations, including the potential burden on landowners and private citizens (this criteria is relevant to a determination whether to list a highly undesirable invasive species as a prohibited invasive species or a restricted invasive species).
- (c) A decision by the Council to classify and list an unlisted non-native species as a regulated, restricted or prohibited invasive species or as an unregulated non-native species, or a decision to remove or otherwise change the classification of an already listed species, shall be based on sound scientific evidence *[or other appropriate standard established in state law or practice]*; however, when a species raises a reasonable threat of harm to human health or safety or harm to the environment (even if some cause and effect relationships are not fully established scientifically), uncertainties should be resolved in favor protecting human health, safety and the environment, and precautionary measures should be taken, including, as appropriate, classification and listing of the species as a prohibited, restricted or regulated invasive species.
- (d) Non-native mammals and birds identified by statute as livestock and non-native plants identified by statute as commodity crops shall be listed as unregulated non-native species. *[Other legislatively directed listings could be made here.]*

CHAPTER 4 – PROHIBITED ACTS

4.01 Prohibited and restricted invasive species.

(a) No person may import, export, purchase, sell, barter, distribute, propagate, transport or introduce a prohibited invasive species or a restricted invasive species and no person may possess a prohibited invasive species, except:

- (1) under a permit issued by the Council under Chapter 6 of this Title;
- (2) when being transported to an appropriate state authority, or another destination as such authority may direct, in a sealed container for purposes of identifying the species or reporting the presence of the species;
- (3) when being transported for disposal as part of an approved control activity under a permit issued pursuant to Chapter 6 of this Title;
- (4) when the specimen has been lawfully acquired dead and, in the case of plant species, all seeds are removed or are otherwise rendered non-viable;
- (5) in the form of herbaria or other preserved specimens, so long as such specimens are rendered non-viable;
- (6) when being removed from watercraft and equipment, or caught while angling, and immediately returned to the water from which they came; or
- (7) as the Council may otherwise prescribe by rule.

(b) The Council may seize or dispose of all specimens of prohibited or restricted invasive species unlawfully possessed, imported, purchased, sold, propagated, transported or introduced in the state consistent with Section 5.05 of this Title.

4.02 Regulated invasive species.

No person may introduce or import a regulated invasive species without a permit issued by the Council under Chapter 6 of this Title.

4.03 Unregulated non-native species.

Species classified as unregulated non-native species by the Council under this Chapter are not subject to any other provision of this Title. The Council may at a subsequent time, based on additional information, reclassify any unregulated non-native species as prohibited or regulated.

4.04 Unlisted non-native species.

(a) Unlisted non-native species are non-native species that have not yet been classified by the Council as prohibited, restricted or regulated invasive species or as unregulated non-native species. No person may introduce or import an unlisted non-native species unless:

- (1) the person has notified the Council in a manner and form prescribed by the Council;
- (2) the Council has made the classification determination required in Section 3.01 and designated the species as appropriate; and,

(3) the introduction or importation is allowed under the applicable provisions of this Title.

4.05 Unintentional import, introduction or spread of species.

It shall be unlawful for any person to cause the unintentional import, introduction or spread of invasive or unlisted species by failure to comply with any rule or regulation established pursuant to Section 5.04 (regarding prevention of unintentional import, introduction or spread of invasive species).

CHAPTER 5 – PREVENTION OF NON-NATIVE SPECIES INVASIONS

5.01 Threat identification.

(a) Threat identification program. The Council shall direct a continuous program of study and evaluation to assess the adequacy of the state's existing and future exclusion, detection, and eradication programs and to identify non-native species for potential designation as prohibited, restricted or regulated invasive species. This program shall be coordinated or integrated with the Invasive Species Management Plan required under Section 2.05 of this Title.

(b) Pathways for unintentional invasions. As part of the program described in subsection (a) of this section, the Council shall study and evaluate the risk of unintentional import, introduction or spread of invasive species through pathways associated with the movement of goods or materials in commerce and with the movement of vehicles, boats, rail cars, aircraft, and any other means of conveyance.

(c) Study and evaluation of a potential pathway for species invasion or of a potentially invasive species for subsequent regulation or designation may be initiated independently by the Council, upon request by another state agency, by petition under Section 3.02(e) or Section 5.04(d) or by notification under Section 4.04.

(d) In evaluating programs, pathways, and species, the Council shall:

(1) Require the state agencies to provide necessary scientific background on state programs. Using such information, the committee shall evaluate the scientific basis for the programs.

(2) Make recommendations to the Governor, the Legislature, and to other state agencies as appropriate regarding the status and capabilities of state invasive species laws, regulations, and programs and regarding changes and improvements to these laws, regulations, and programs, including funding requirements and other resource needs.

(3) Identify potentially invasive non-native species in other states and foreign countries that pose a significant threat of economic or environmental harm or harm to human health or safety and that have a significant likelihood of being introduced into the state.

(4) Identify high-risk areas for invasive species introduction, including, without limitation, ecosystems that are by their nature particularly vulnerable to invasion and areas that are by their location particularly likely to be subject to an intentional or unintentional introduction, and offer recommendations for specific programmatic activities to address such risk.

(5) Identify high risk pathways for species invasion and identify best practices, procedures, technologies or other methods to reduce or eliminate the risk of invasion;

(6) Study the possibility of partnerships with other public and private entities to develop programs, projects, and activities which may be cost-effective and which may assist in implementing an invasive species prevention program.

(7) Address any area of concern that is raised by the Invasive Species Advisory Committee or other sources regarding the state's prevention, detection, control and eradication programs.

5.02 Detection programs.

(a) Surveys and investigations. The Council may authorize and conduct surveys or investigations of any premises, public or private, within the state known or reasonably suspected to be infested or infected with any invasive or potentially invasive non-native species or disease, including, without limitation, any infectious, transmissible, or contagious diseases

of plants, livestock, poultry, or wildlife, for the purpose of confirming or detecting the presence of, or determining the status of, the species or disease or for the purpose of identifying potential pathways for species invasion. The Council may also authorize and conduct surveys or investigations of any premises, public or private, within the state where invasive species may be known or reasonably suspected of entering the state, including at border check stations or other points of entry to the state. The Council shall inform and consult with appropriate local government officials concerning these surveys or investigations and in the implementation of any control or eradication activity. Premises subject to survey or investigation may include, but are not limited to, all or any:

- (1) nursery, orchard, vineyard, agricultural commodity, agricultural appliance, grain handling facility, feedlot, farm or game farm;
- (2) port, marine terminal, shipyard, airport, truck terminal, warehouse, distribution center or other transportation hub;
- (3) botanical garden, arboretum, zoo or animal or plant research facility;
- (4) pet or aquarium wholesale or retail operation;
- (5) stream, river, lake, wetland, bay or other body of water or aquatic habitat; or,
- (6) forest, wood lot, park, open space, reserve or other terrestrial habitat.

(b) Entry and inspection. Upon reasonable notice, the Council may authorize entry and enter upon any premises, public or private, to inspect the premises or any plant, appliance, or thing which is on such premises for the purpose of confirming or detecting the presence of, or determining the status of, any invasive or potentially invasive non-native species or disease, or for the purpose of identifying potential pathways for species invasion, or for otherwise carrying out the Council's obligations under subsection (a) above.

(c) Mapping. The Council shall develop and maintain a map or maps identifying the location within the state of confirmed infestations of invasive species, both terrestrial and aquatic, and areas that are particularly vulnerable or sensitive to potential invasions. In developing such maps, the Council shall consult with the [State] Natural Heritage Program. Periodic updates of the map shall be distributed to personnel of critical state agencies and to the public at large.

(d) Listing. The Council shall annually compile and maintain a list identifying other states and locations within the United States and abroad where there are known to be confirmed infestations or native populations of invasive species, both terrestrial and aquatic, including diseases, microorganisms and other plant, animal or human pests that may affect otherwise healthy species that may be imported. Such a list will identify species, including but not limited to invasive species, and the states or locations from which they originate that are prohibited from importation. This list will be provided to the appropriate agency personnel as well as importation permit holders.

5.03 Import and introduction of invasive species.

(a) Prohibition. The importation and introduction of any prohibited invasive species, restricted invasive species or regulated invasive species is prohibited without a permit issued under Chapter 6 of this Title as specified in Sections 4.01 and 4.02. The importation or introduction of an unlisted non-native species is prohibited as specified in Section 4.04.

(b) Notice and inspection. Permittees or other persons importing non-native species shall notify the Council or designated authorities, in a time and manner designated by the Council, and in any event at least 72 hours in advance, of the arrival a shipment of prohibited, restricted or regulated invasive species or of unlisted non-native species being imported for any purpose. Such shipment and all pertinent records shall be open to inspection by the agency prior to their release or further disposition.

(c) Permits. Permits for introduction or importation of non-native species are issued pursuant to the applicable provisions of Chapter 6 of this Title (permitting programs). Each request for a permit to import or introduce will be considered on its merits, taking into consideration potential economic and environmental harm and harm to human health and safety; competition with or effect on native species; prolific breeders; and agricultural pests. In determining whether to issue a permit for importation or introduction, the Council shall use the relevant standards of this Section in addition to the standards established in Chapter 6. Permits for importation or introduction shall include the relevant conditions and other provisions of this Section in addition to the conditions established in Chapter 6.

(d) Standards for introduction or importation of species. The Council may issue a permit under this Chapter only if the Council determines that the permitted activity would not pose an unreasonable risk of economic or environmental harm or harm to human health or safety, and only if the Council determines, based on scientific evidence that:

- (1) the factors which limit the distribution and abundance of the species in its native habitat have been studied and its probable dispersal pattern appraised;
- (2) in any area where a species is proposed to be introduced there is no stock of a desirable, ecologically comparable indigenous species which can be increased or rehabilitated by reintroduction;
- (3) the species proposed to be imported or introduced will not threaten the existence and stability of any native species, including any state or federal threatened or endangered species;
- (4) the availability of socially acceptable methods of eliminating the species or keeping it under control in the state generally and in any area where it is proposed to be introduced and adjoining areas;
- (5) the extent to which the species will enhance economic and aesthetic values in the state generally and in any area where it is proposed to be introduced;
- (6) the individuals to be imported or introduced did not originate from locations included on the list compiled under Section 5.02(d) because of possible infestation with organisms that are not the species intended to be introduced and are otherwise free of communicable diseases and parasites and that there is no reason to believe that any communicable disease or parasite constitutes an important factor in the control of population; and
- (7) there is no foreseeable risk of conflict on account of the importation or introduction with land use policies in the area where a species is proposed to be introduced or in adjoining areas to which the species might spread.

(e) Conditions. Any permit issued by the Council under this section shall be subject to such conditions or requirements as deemed necessary by the Council to prevent economic or environmental harm or harm to human health or safety. Such conditions may include, without limitation:

- (1) any condition listed in Section 6.02 (individual permits);
- (2) such post-entry or post-introduction monitoring requirements on imported or introduced species as deemed necessary to protect the public and the natural resources of the state from economic or environmental harm or harm to human health or safety.

5.04 Unintentional import, introduction or spread of invasive species

(a) The Council shall, based on the information developed under Section 5.01 and Section 5.02, upon consultation with the Invasive Species Advisory Committee, and on any other available information, adopt such rules and regulations as are reasonable and necessary to prevent or curtail the unintentional import, introduction or spread of invasive and unlisted species through pathways associated with the movement of goods, materials or other articles in commerce

and with the movement of any means of conveyance, or through any other identified pathway. Such rules and regulations may include, without limitation:

- (1) best management practices;
- (2) pre-entry or post-entry notice and inspection requirements;
- (3) quarantine procedures;
- (4) permitting programs or requirements;
- (5) prohibitions on the import of import of certain goods, materials or other articles unless demonstrated to be free of invasive species; and
- (6) prohibitions or other restrictions on the use of certain packaging or the use or movement of certain means of conveyance unless demonstrated to be free of invasive species.

(b) The Council shall consult with the Invasive Species Advisory Committee in determining how to curtail the unintentional import, introduction or spread of invasive and unlisted species through pathways associated with the movement of goods, materials or other articles in commerce and with the movement of any means of conveyance, or through any other identified pathway.

(c) A decision by the Council to establish rules or regulations to prevent or curtail the unintentional import, introduction or spread of invasive and unlisted species through pathways associated with the movement of goods, materials or other articles in commerce and with the movement of any means of conveyance or any other identified pathway, shall be based on sound scientific evidence *[or other appropriate standard from established in state administrative practice]*; however, when a pathway raises a reasonable threat of harm to human health or safety or harm to the environment (even if some cause and effect relationships are not fully established scientifically), uncertainties should be resolved in favor protecting human health, safety, and the environment, and precautionary measures should be taken, including, as appropriate, action to prevent or curtail the import, introduction or spread of invasive or unlisted species through such pathway.

(d) Any person may petition the Council to establish rules or regulations to prevent or curtail the unintentional import, introduction or spread of invasive and unlisted species through an identified pathway in such a manner as the Council shall establish by rule. Such petition may be accompanied by information relevant and helpful to the Council in making a determination under this Section. The Council will act on such a petition in a timely manner. The Council may prioritize its determinations as appropriate to quickly and efficiently address the most urgent threats from potential pathways.

5.05 Seizure.

The Council or its agents may, at its discretion, refuse entry, confiscate, seize or destroy any prohibited invasive species, restricted invasive species or regulated invasive species, or any unlisted species that are discovered arriving in or present in the State without the appropriate permit issued by the Council or that are otherwise being unlawfully possessed, imported, exported, purchased, sold, bartered, distributed, propagated, transported or introduced, or order the return of any plant, fruit, vegetable or any other specimen, packing material, or any other materials, goods or other articles, or means of conveyance infested with a prohibited, restricted, or regulated invasive species, or an unlisted species, to its place of origin or otherwise dispose of it or such part thereof as may be necessary to comply with this Title. Any expense or loss in connection therewith shall be borne by the owner of such items or the owner's agent.

5.06 Quarantines.

- (a) The Council is authorized to direct the quarantine of any species, goods, materials or other articles or any means of conveyance as necessary to protect the public and the natural resources of the state from economic or environmental harm or to prevent harm to human health or safety.
- (b) The Council shall establish by rule such quarantine requirements as are necessary to protect the public and the natural resources of the state from economic or environmental harm or harm to human health or safety. Such quarantines may include, but are not limited to:
- (1) quarantines of imports to the state of certain identified species (including, without limitation, plants of any kind, livestock, wildlife or other animals, aquatic plants or animals, insects, fungal or disease species, seeds or other reproductive material), arriving at points of destination in the state;
 - (2) quarantines of imports of materials, goods or other articles, including species, to the state from certain identified out-of-state locations;
 - (3) quarantines of identified species or species from identified out-of-state locations, or of materials, goods or other articles, including species, from identified out-of-state locations that are to be transported through the state;
 - (4) quarantines preventing movement within the state of certain identified species, goods, materials or other articles;
 - (5) quarantines preventing movement within the state of species from certain identified areas within the state, including both public and private property or facilities; and
 - (6) mandatory quarantines to determine whether imported goods, materials, other articles or species are infected or infested.

5.07 Invasive species education program.

- (a) The Council shall establish and implement an invasive species education program for the development and dissemination of information regarding the threat of invasive non-native species, state laws and policies related to non-native species, and methods of prevention, management, and control of invasive non-native species. The program shall include, without limitation, the development of:
- (1) educational materials, including printed and internet-based materials;
 - (2) educational, informational or technical workshops;
 - (3) educational or technical training courses; and
 - (4) public or industry outreach programs, including public service media announcements.
- (b) The Council shall develop the invasive species education program materials, workshops, courses, and outreach described in subsection (a) so as to target all relevant audiences, including, without limitation:
- (1) landowners and private citizens;
 - (2) K-12 and secondary educational institutions;
 - (3) state and local public officials with responsibilities related to invasive species; and,

(4) management and employees of relevant private industries. For purposes of this Section, relevant private industries may include, without limitation: common carriers, transportation terminals, port authorities, crop and livestock agriculture, forestry and timber industries, horticulture and nursery businesses, apiaries, fishing and bait businesses, and pet industries. Whenever practicable, the Council shall work directly with representatives of relevant private industries in developing, disseminating, implementing or delivering educational materials, programs, courses and outreach for the employees and/or patrons of such industries.

(c) The Council shall ensure that the invasive species education program places special emphasis on providing education regarding effective methods of preventing the introduction of invasive non-native species.

(d) The Council will regularly evaluate the effectiveness of the invasive species education program developed pursuant to this section.

(e) The Council may establish an advisory committee to assist with the development and dissemination, implementation or delivery of educational materials, workshops, courses, and outreach. Such committee may include, without limitation, representatives of the following industries, sectors, and institutions:

- (1) air, land, and maritime common carriers;
- (2) port authorities;
- (3) state agencies;
- (4) local governments;
- (5) other private industries that the Council deems appropriate;
- (6) State university faculty;
- (7) public relations and advertising businesses;
- (8) scientific research institutions; and,
- (9) environmental and citizen organizations.

CHAPTER 6 – PERMITTING PROGRAMS

6.01 Permits.

(a) The Council shall establish a program, consistent with the requirements of this Title and as further described in this Chapter, to issue permits governing:

- (1) the possession, importation, exportation, purchase, sale, barter, distribution, propagation or introduction of non-native species;
- (2) the operation of a facility possessing, housing, propagating, growing or raising, selling or otherwise trading in non-native species;
- (3) the transfer or transportation of non-native species into, out of, across or through the state; and,
- (4) other activities related to non-native species as the Council deems necessary.

(b) Standard. The Council may issue a permit under this Chapter only if the Council determines that the permitted activity would not pose an unreasonable risk of economic or environmental harm or harm to human health or safety. The Council may deny, issue with conditions, modify or revoke a permit under this Chapter as necessary to ensure that the proposed activity will not pose an unreasonable risk of economic or environmental harm or harm to human health or safety.

(c) Rules and regulations. The Council shall issue such rules and regulations as are necessary to implement this Chapter. Such rules and regulations may include the imposition of reasonable fees for permits as well as regulations establishing best management practices for permittees and others including regulations governing the care, housing, and transportation of non-native species or other matter as deemed appropriate by the Council to fulfill the intents and purposes of this Title. Fees may be waived for state agency applicants. Fees collected shall be credited to the Invasive Species Management Fund established pursuant to Section 8.04 of this Title.

(d) Other agencies. The Council may delegate authority to issue permits for certain identified activities or species to another state agency with appropriate expertise or capacity upon agreement between the Council and the agency. Such other agencies will be deemed agents of the Council for purposes of this Title. The Council shall retain oversight authority and responsibility for all permitting activities under this Title.

(e) Appeal of permit decision. A permit decision may be appealed as provided in the state administrative code.

6.02 Individual Permits.

(a) Prohibited invasive species. The Council may issue a permit for the possession, import, export, purchase, sale, barter, distribution, propagation or introduction of a prohibited invasive species for the purposes of disposal, control, research or education, or another purpose approved by the Council.

(b) Restricted invasive species. The Council may issue a permit for the import, export, purchase, sale, barter, distribution, propagation or introduction of a restricted invasive species for the purposes of disposal, control, research or education, or another purpose approved by the Council. A permit is not required for a person to possess a restricted invasive species.

(c) Regulated invasive species. The Council may issue a permit for the introduction of a regulated invasive species for the purposes of control, research or education, or another purpose approved by the Council. A permit is not required

for a person to possess, import, export, purchase, sell, barter, propagate or transport a regulated invasive species, but is needed to introduce a regulated invasive species.

(d) Any permit issued by the Council under this section shall be subject to such conditions or requirements as deemed necessary by the Council to prevent economic or environmental harm or harm to human health or safety. Such conditions may include, without limitation:

- (1) permittees shall, upon reasonable notice and at all reasonable times, allow the Council or designated authorities to enter and inspect all species, facilities, and records;
- (2) permittees shall have a plan, approved in advance by the Council, for the prevention of the escape or other unintentional and unpermitted introduction of invasive species possessed by the permittee pursuant to a permit, including appropriate means of containment;
- (3) permittees shall have a plan, approved in advance by the Council, for the quick and safe recovery or recapture of any invasive specimen that is introduced as the result of an escape or other unintended and unpermitted release, or if recovery or recapture is impossible, for the destruction of such escaped or released species;
- (4) permittees shall be required to maintain appropriate records as specified by the Council and shall make such records available for inspection by the Council upon reasonable demand;
- (5) permittees shall provide proof of legal ownership of the invasive species;
- (6) all imported species must have been legally obtained in full compliance with federal law and the laws of the state or country of origin;
- (7) permittees shall comply with bonding or insurance requirements as directed by the Council;
- (8) permittees shall have and implement a monitoring plan, approved in advance by the Council and consistent with the requirements of Section 6.05 of this Title, adequate to protect the public and the natural resources of the state from economic or environmental harm or harm to human health or safety; and
- (9) permittees shall have had such training or demonstrated such knowledge in the safe handling of the relevant invasive species as the Council deems appropriate and necessary to issue a permit.

(e) The Council may allow expedited permitting if the permittee already has a current facility permit under Section 6.03, valid for the species for which the individual permit is requested.

(f) The Council may permit possession by a permittee or permittees of an individual specimen or specimens of prohibited invasive species while still prohibiting import, export, purchase, sale, barter, propagation, and/or transportation of the same species.

(g) Harvest of bait from infested waters. The Council may issue a permit to allow the harvest of bait from waters that are mapped or designated as infested waters under Section 5.02, except those designated because they contain prohibited or regulated invasive species of fish. The permit shall include conditions necessary to avoid spreading invasive species. Before receiving a permit, a person annually must satisfactorily complete appropriate invasive species training provided by the Council under Section 5.07.

6.03 Facilities.

(a) No person shall own or operate a facility for the display, housing, propagation, growing or raising, selling or other trade in invasive species without a permit issued by the Council.

- (b) The Council may issue a permit for the operation of a facility displaying, housing, propagating, growing or raising, selling or otherwise trading in invasive species.
- (c) Any permit issued by the Council shall be subject to such conditions or requirements as deemed necessary by the Council to prevent economic or environmental harm or harm to human health or safety. Such conditions may include, without limitation:
- (1) any condition listed in section 6.02(d) (relating to inspections, escape prevention and recovery plans, record keeping, ownership requirements, insurance and bonding requirements, etc.);
 - (2) appropriate siting and design requirements to ensure safe and adequate containment of invasive species and to protect surrounding communities, environments and the state; and
 - (3) requirements for operator licensing, qualification or training, including training provided under Section 5.07.

6.04 Transportation of invasive species.

- (a) Prohibition. No person shall transport prohibited or restricted invasive species into, out of, across, through or within the state without a permit issued by the Council pursuant to this Chapter.
- (b) Notice required. Persons transporting prohibited or restricted invasive species into, out of, across, through or within the state shall give timely advance notice to the Council, in a manner prescribed by the Council, prior to entry into the state to allow for inspection.
- (c) Permits. The Council may issue permits for the transportation of invasive species into, out of, across, through or within the state.
- (d) Any permit issued by the Council shall be subject to such conditions or requirements as deemed necessary by the Council to prevent economic or environmental harm or harm to human health or safety. Such conditions may include, without limitation:
- (1) any condition listed in Section 6.02(d) (relating to inspections, escape prevention and recovery plans, record keeping, ownership requirements, insurance and bonding requirements, etc.) and in Section 6.03(c) (relating to siting and design requirements and operator licensing, qualification and training)
 - (2) appropriate labeling requirements as determined by the Council
- (e) The Council may establish by rule requirements for the labeling of shipments, motor vehicles, rail cars, containers, or any other vehicle or device used for the transport of any non-native species into, out of, across, through, or within the state. Labeling requirements established by the Council shall include, without limitation, requirements that containers be marked with the name and address of the shipper, the name of the person to whom they are shipped, the name of the country, state or territory where the product was grown or produced, and the contents of the container.
- (f) The Council may establish by rule registration or licensing requirements for persons engaged in the transportation of non-native species into, out of, across, through or within the state, including, without limitation requirements for qualification or training, including training provided under Section 5.07.
- (g) The Council is authorized to establish inspection stations at any or all points of entry to the state to ensure that any person, vehicle or container is not bearing invasive species without the proper permit. The Council is authorized to inspect any or all incoming shipments of any kind for the presence of non-native species and/or to require a declaration of any person entering the state as to that person's possession of non-native species.

6.05 Monitoring.

The Council shall establish a post-introduction monitoring and evaluation program to evaluate the impact of recently introduced non-native species on the environment. The monitoring program shall be designed to identify unforeseen impacts on the environment or human health or safety and unintended spreading of the species. Monitoring of introduced species shall be required of permittees as specified in Section 6.02 and Section 5.03 of this Title and should continue until the species reaches a state where its population stabilizes and there is minimal information to be gained from further monitoring. If the species does not reach a stable state, monitoring shall continue until the species is removed from the environment. Monitoring program data regarding the location of introduced species will be included in the map or maps developed pursuant to Section 5.02(c) (detection program) and shall be made available to the public.

6.06 Bonding and liability.

- (a) A permittee under this Chapter shall file a bond or deposit with the Council, in the form and in the amount determined by the Council, to pay for the costs and damages associated with an escape or introduction of a prohibited, restricted or regulated invasive species.
- (b) Any person who introduces a prohibited or restricted invasive species is absolutely liable for the actual costs of any damages caused by the introduction and any costs incurred by the Council or its designees in capturing or controlling the introduced species, including any introduced specimens and their progeny. Any person who introduces a regulated invasive species is liable for the actual costs of any damages caused by the introduction and any costs incurred by the Council or its designees in capturing, eradicating or controlling the introduced species, including any introduced specimens and their progeny, but only if the introduction was unpermitted or in violation of the permit issued.
- (c) Any person who causes the unintentional introduction or spread of invasive or unlisted species by failure to comply with any rule or regulation established pursuant to Section 5.04 (regarding prevention of unintentional import, introduction or spread of invasive species) shall be liable for the actual costs of any damages caused by the introduction and any costs incurred by the Council or its designees in capturing, eradicating or controlling the introduced species, including any introduced specimens and their progeny.

CHAPTER 7 – CONTROL AND MANAGEMENT OF INVASIVE SPECIES

7.01 Control and Management Authority.

- (a) General control and management authority. The Council or its authorized agents are authorized to make all decisions on the control, management, and eradication of invasive species, and to undertake all appropriate control, management or eradication measures, on all lands, water bodies, or any other location within the state, private and public, consistent with the provisions of this Chapter.
- (b) Orders for control, management or eradication. The Council or its authorized agents may order the control, management or eradication of prohibited, restricted or regulated invasive species on any land, water body or other location within the state.
- (c) Authorized agents. The Council may authorize state agency employees or county officials to act as agents of the Council in the administration and enforcement of this Chapter. Authorized agents may also include private contractors hired to undertake control, management or eradication measures and accompanied by a designated state employee or county official.
- (d) Entry upon property. To administer and enforce this Chapter, the Council or its authorized agents may enter upon land, buildings or other property without consent of the owner and without being subject to an action for trespass or any damages, except damages resulting from gross negligence.
- (e) Rules. The commissioner may adopt rules and regulations necessary for the implementation and enforcement of this Chapter.

7.02 Responsibility for Introduction or Infestation.

- (a) Notice to the Council. A person owning private lands, waters or wetlands, or a person occupying private lands, waters or wetlands, or a person responsible for the maintenance of public lands shall immediately notify the Council or its authorized agent, in a manner specified by the Council, of the unpermitted introduction, infestation, or presence of any prohibited, restricted, or regulated invasive species on the land.
- (b) Land owners and occupiers. A person owning private lands, waters or wetlands, or a person occupying private lands, waters, or wetlands, or a person responsible for the maintenance of public lands shall control or eradicate all unpermitted introductions, populations or infestations of prohibited, restricted or regulated invasive species on the land. If there is an infestation of invasive species beyond the ability of the person who owns or occupies the land to control or eradicate it, the Council may, upon request of the person who owns or occupies the land or on the Council's own initiative, take necessary steps to prevent the further spread of the invasive species.
- (c) Public waters and wetlands. An owner of nonfederal lands underlying public waters or wetlands is not required to control, manage or eradicate prohibited, restricted or regulated invasive species below the ordinary high water level of the public water or wetland. The Council or its authorized agents are responsible for control, management, and eradication of invasive species on public waters and wetlands, except those located upon lands owned in fee title or managed by the United States. The Council and its authorized agents may enter upon public waters and wetlands and, after providing notification to the occupant or owner of the land, may cross adjacent lands as necessary for the purpose of investigating and formulating methods of control, management, and eradication, and for implementing control, management, and eradication of invasive species.
- (d) Public Lands. The Council or its authorized agents are responsible for control, management, and eradication of invasive species on public lands. The Council and its authorized agents may enter upon public lands and, after provid-

ing notification to the occupant or owner of the land, may cross adjacent lands as necessary for the purpose of investigating and formulating methods of control, management, and eradication, and for implementing control, management, and eradication of invasive species.

(e) Federal enclaves. Lands and waters subject to the exclusive jurisdiction of the United States are not subject to the provisions of this Chapter. The Council shall consult with relevant federal agencies and authorities to address the control and management of invasive species on federal enclave lands and waters.

7.03 Notices for Control.

(a) Individual notice for control. If necessary to secure more prompt or effective action to control or eradicate an introduction or infestation of prohibited, restricted or regulated invasive species, the Council or its authorized agents may serve individual notice in writing upon a person who owns private land and/or the person who occupies private lands, or a person responsible for or charged with the maintenance of public land, giving specific instructions on when and how named invasive species are to be controlled or eradicated. Where appropriate, notices under this section may also require restoration of native species pursuant to the restoration program established in Section 7.07. Individual notices provided for in this section shall be served in the same manner as a summons in a civil action in the district court or by certified mail.

(b) Appeals. The recipient of an individual notice for control may appeal the order in a manner prescribed by the Council. The Council shall establish rules and regulations governing appeals of individual notices and other orders of the Council or its designees. Subsequent appeals may be taken pursuant to the state administrative code.

(c) Entry and control. If a person does not comply with an individual notice served on the person or a decision on appeal from such notice, or an individual notice cannot be served, the Council or its authorized agents may enter the property and have the prohibited, restricted or regulated invasive species controlled or eradicated within the time and in the manner the Council or its authorized agents designates.

(d) Control or eradication of growing crops. The Council or its authorized agents may consider it necessary to control or eradicate prohibited, restricted or regulated invasive species along with all or a part of a growing crop to prevent the maturation and spread of prohibited or regulated invasive species. If this situation exists, the Council or its authorized agents may order the invasive species controlled or eradicated together with the crop following the issuance of a notice and an opportunity to appeal under the appeals process established by the Council under this Section and the state administrative code.

(e) Costs. Unless determined otherwise by the Council, a person owning private lands, waters or wetlands, or a person occupying private lands, waters or wetlands, or a person responsible for the maintenance of public lands shall be liable for all costs associated with the control or eradication of all unpermitted prohibited, restricted or regulated invasive species on the land. The Council may assess such person with the costs associated with eradication or control measures undertaken by the Council or its authorized agents. A person may appeal the assessment of such costs under the process established by the Council under this Section and the state administrative code. In making a determination as to liability for costs, the Council shall consider the cost of eradication and control measures, the ability of the owner or occupier of the lands to pay for the eradication or control measures and the degree of culpability of the owner or occupier of the lands with respect to the presence or proliferation of the invasive species.

7.04 Control and management programs.

The Council shall establish comprehensive programs for the control and management of specific, identified invasive species as it deems necessary to protect against economic and environmental harm or harm to human health or safety. Such programs may include, without limitation, landowner grants, incentive programs, cost-share programs, and bounty programs.

7.05 Emergency powers.

- (a) If a new and potentially harmful invasive species, or a newly identified population or infestation of a prohibited, restricted or regulated invasive species, is discovered in the state and the Council verifies its presence and determines that the new species, population or infestation threatens to cause economic or environmental harm or harm to human health or safety and that immediate action is needed to prevent such harm, the Governor may declare an invasive species emergency.
- (b) When the Governor declares an invasive species emergency s/he shall specify the area or areas of the major infestation. Within such area or areas, the Governor is authorized to direct that such emergency measures be taken as s/he deems necessary to alleviate conditions which threaten to cause economic or environmental harm or harm to human health or safety.
- (c) All persons authorized to carry out emergency measures will have free access to all public and private lands and buildings within the areas specified and may perform control measures with or without the consent of the owners if the entry is reasonably necessary to alleviate or prevent economic or environmental harm or harm to human health or safety.
- (d) In the absence of necessary funding from other sources, the Council may allocate funds from the invasive species management fund established in Section 8.04 of this Title to support emergency relief efforts to manage or confine the new species, population or infestation.

7.06 Biological controls.

- (a) Prohibition. No person may use biological controls that are prohibited, restricted or regulated invasive species on any lands or in any waters within the state as a biological control to control plant or animal pests of any kind, aquatic or terrestrial, unless that person has been issued a permit by the Council. No person may use an unlisted non-native species as a biological control.
- (b) Permits. The Council may issue a permit under this section for the use of biological controls that are prohibited, restricted or regulated non-native species. The Council may deny, issue with conditions, modify or revoke a permit under this Chapter as necessary to ensure that the proposed activity will not pose an unreasonable risk of economic or environmental harm or harm to human health or safety. The Council may rely on findings of the Department of Environmental Protection, the United States Department of Agriculture, the U.S. Army Corps of Engineers, and other state or federal agencies in making any determination about organisms used for biological control.
- (c) Standard. The Council may issue a permit under this Chapter only if the Council determines that the permitted activity would not pose an unreasonable risk of economic or environmental harm or harm to human health or safety, and only if the Council determines, based on scientific evidence that:
- (1) the introduction of the biological control meets the standards for introduction of species set forth in Section 5.03;
 - (2) there is negligible risk to non-target species and the environment;
 - (3) there is negligible risk to public health or safety;
 - (4) the biological control agent is specific to a target organism or plant and not likely to become a pest of plants or other beneficial organisms as evidenced by data on host specificity of the biological control agent submitted to the council;

(5) there is a public benefit to be achieved from the use of the biological control or, in the case of a proposed site located entirely on a landowner's property, no adverse effect upon the public good;

(6) the applicant has demonstrated an adequate competency for use of the biological control and has prepared adequate post-release monitoring and management plans;

(7) the applicant must demonstrate compliance with all applicable federal regulations regarding the use of biological control agents.

(d) Conditions. Any permit issued by the Council under this section shall be subject to such conditions or requirements as deemed necessary by the Council to prevent economic or environmental harm or harm to human health or safety. Such conditions may include, without limitation:

(1) any condition listed in Section 6.02 (individual permits).

(2) permittees shall keep adequate and accurate records of the use of biological controls including, without limitation, information on time, place, and quantity of controls released;

(3) permittees shall apply all appropriate safety measures;

(4) permittees shall implement a long-range management plan for the use of the biological agent;

(5) permittees will implement a post-release monitoring program to assess the behavior of the biological control in the environment;

(6) permittees will make reports to the Council on the use and monitoring of the biological control in a manner and for a duration specified by the Council; and,

(7) where appropriate, permittees shall prepare a plan for the restoration of native species following use of a biological control.

(e) The Council shall issue such rules and regulations as are necessary to implement this Section. Such rules and regulations may include the imposition of reasonable fees for permits. Fees may be waived for government agency applicants. Fees collected shall be credited to the invasive species management fund established in Section 8.04 of this Title.

7.07 Restoration.

(a) It shall be the policy and practice of the Council to promote restoration of native species in areas that have been subject to efforts to control, manage or eradicate invasive species.

(b) The Council shall establish programs to support the restoration of native species by appropriate state agencies and by, or in cooperation with, persons owning private lands, persons occupying private lands or persons responsible for the maintenance of public lands, in areas that are or have been subject to control, management or eradication of invasive species under the provisions of this chapter. The Council may establish programs that apply to wildlife, plants, aquatic species, insects, and all other taxa of native species. The Council may establish programs to provide for restoration of native species in identified areas or ecosystems of particular concern.

(c) The Council may establish guidelines on where, how, and under what circumstances restoration should be accomplished.

(d) The Council shall issue such rules and regulations as are necessary to implement this Section.

(e) The Council shall identify and dedicate funding for the activities required under this Section.

CHAPTER 8 – ENFORCEMENT AND IMPLEMENTATION

8.01 Administrative Penalties.

(a) Notice of Violation and Order. In addition to any other remedy provided by law, upon a determination by the Council that a person has violated or is in violation of any provision of this Title, any rule or regulation of the Council established pursuant to this Title, or any term or condition of any permit that has been lawfully issued pursuant to this Title, or upon a determination that a person has failed or refused to comply with an order lawfully issued by the Council pursuant to this Title, the Council may issue a Notice of Violation and Order assessing an administrative penalty upon the violator under this section. Any order assessing an administrative penalty shall state that an administrative penalty is being assessed under this section and that the person subject to the penalty may appeal as provided by this section. Any administrative penalty must be assessed within two years from the date of the Council's initial discovery of such alleged violation, or from the date the Council in the exercise of ordinary diligence should have discovered such alleged violation.

(b) Amount. The amount of the administrative penalty assessed per day of violation for each violation under this section shall not exceed the amount of the criminal penalties specified in Section 8.02. In determining the amount of any penalty assessed pursuant to this section, the department shall take into account the nature, circumstances, extent, and gravity of the noncompliance including:

- (1) the person's ability to pay;
- (2) any prior history of violations;
- (3) the degree of culpability and the willingness of the violator to cooperate with the Council to correct the violation;
- (4) the economic benefit or savings, if any, resulting from the noncompliance;
- (5) the degree to which the violation caused or had the potential to cause economic or environmental harm or harm to human health or safety;
- (6) the reasonable response costs of the Council and the liability of the person for damages or response costs under Section 7.03;
- (7) the need to deter future violations; and,
- (8) any other matters that justice may require.

An administrative penalty under this section shall not be increased in those instances where Council action, or failure to act, has caused a continuation of the violation that was a basis for the penalty.

(c) Notice and Hearing. An administrative penalty may not be collected pursuant to this section unless the person charged with the noncompliance is given notice and opportunity for a hearing with respect to the noncompliance. A hearing may be requested by submitting a written request stating the reason for the request within 30 days after receipt of the Notice of Violation and Order.

(d) Appeals. Any person subject to an administrative penalty may appeal to the Council in the manner provided by law [*under the state's administrative procedures act*]. Any appeal will stay the due date of such administrative penalty until the appeal is resolved. Any final order imposing an administrative penalty is subject to judicial review in the manner provided by law.

(e) Rules and Funds. The Council shall promulgate rules and regulations regarding the assessment of administrative penalties. Administrative penalties collected under this section shall be deposited in the Invasive Species Management Fund established pursuant to Section 8.04 of this Title.

8.02 Criminal Penalties.

(a) Any person who violates any provision of this Title or who violates any rule validly adopted by the Council or other state agency under this Title or who violates the terms or conditions of any permit issued under this Title shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$XXXX nor more than \$XXXX. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not less than \$XXXX nor more than \$XXXX.

(b) Any person who knowingly, intentionally or negligently violates the terms or conditions of a permit issued under Chapter 6 (regarding permits) or Section 7.06 (regarding biological controls) of this Title shall be guilty of a misdemeanor and shall be punished by fine of not less than \$XXXX nor more than \$XXXX per day of violation. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not less than \$XXXX nor more than \$XXXX per day of violation.

(c) Any person who knowingly, intentionally or negligently violates the prohibitions of Sections 4.01, 4.02 or 4.04 (regarding prohibited Acts) shall be guilty of a [class X] felony and shall be punished by a fine of not less than \$XXXX nor more than \$XXXX per day of violation, or by imprisonment for not more than X years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$XXXX per day of violation, or by imprisonment of not more than X years, or by both.

(d) Any person who knowingly or intentionally introduces a prohibited or restricted invasive species in violation of this title, or who possess a prohibited invasive species with intent to propagate or introduce such species, shall be guilty of a [class X] felony and shall be punished by a fine of not less than \$XXXX nor more than \$XXXX per day of violation, or by imprisonment for not more than X years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$XXXX per day of violation, or by imprisonment of not more than X years, or by both.

(e) For purposes of this section “intent to propagate” shall be presumed when the person or organization in question is found to possess, transport, harbor, or import without a permit:

- (1) Any two or more prohibited specimens of the opposite sex;
- (2) Any three or more prohibited specimens of either sex;
- (3) Any prohibited plant or microorganism having the inherent capability to reproduce; or,
- (4) Any prohibited specimen that is in the process of reproduction.

8.03 Liability.

(a) Whenever a court sentences a person or organization pursuant to subsections (b), (c) or (d) of Section 8.02, for an offense which has resulted in the introduction of any prohibited, restricted or regulated invasive species and caused the Council or its agents to initiate an activity to control, manage or eradicate that species, the court shall also require that the person or organization pay to the Invasive Species Management Fund an amount of money to be determined in the

discretion of the court upon advice of the Council, based upon the cost of the development and implementation of the control, management or eradication activity.

(b) Whenever a court sentences a person or organization pursuant to subsections (b), (c) or (d) of Section 8.02 for an offense which has resulted in the introduction of any prohibited, restricted or regulated invasive species and caused damages to public or private lands, water bodies or other natural resources or public or private property of any kind, that person shall be liable for the costs of remediation for such damages.

8.04 Invasive Species Management Fund.

(a) The Council shall establish and maintain the Invasive Species Management Fund.

(b) The fund shall receive such appropriations as deemed necessary by the Governor and the Legislature to accomplish the goals of this Title. The fund shall also receive funds from the collection of reasonable fees for permits or as otherwise required by this Title or the Council. The Fund may also receive, at the discretion of the Council, funds from any other lawful source including, without limitation, fees, penalties, fines, gifts, grants, legacies of money, property, securities or other assets, or any other source, public or private.

(c) The fund shall be used in the discretion of the Council to support activities related to the prevention, control, and management of invasive species, including research related to such activities, and to support the restoration of native species in locations where invasive species have been eradicated or otherwise controlled or managed.

(d) Monies in the Invasive Species Management Fund are continuously appropriated for the purposes of this Title. All interest or other income accruing from monies deposited to the Fund shall be re-deposited and accrue to the Fund. Any unexpended balance left in the Fund at the end of any fiscal year shall carry forward without reduction to the following fiscal year.