

12 Appendices

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12.B Appendix B. Invasive Species in Louisiana

Invasive Species Reported, Introduced, and/or Established in Louisiana¹

Group	Scientific Name	Common Name
Amphibians	<i>Eleutherodactylus coqui</i>	Coqui
Amphibians	<i>Eleutherodactylus planirostris</i>	Greenhouse frog
Coelenterates	<i>Phyllohiza punctata</i>	Australian spotted jellyfish
Crustaceans	<i>Daphnia lumholzi</i>	Water flea
Fish	<i>Astronotus ocellatus</i>	Oscar
Fish	<i>Cichlasoma cyanoguttatum</i>	Rio Grande cichlid
Fish	<i>Colossoma</i> or <i>Piaractus</i> sp.	Unidentified pacu
Fish	<i>Ctenopharyngodon idella</i>	Grass carp
Fish	<i>Cyprinus carpio</i>	Common carp
Fish	<i>Hypophthalmichthys molitrix</i>	Silver carp
Fish	<i>Hypophthalmichthys nobilis</i>	Bighead carp
Fish	<i>Hypostomus</i> sp.	Suckermouth catfish
Fish	<i>Macropodus opercularis</i>	Paradisefish
Fish	<i>Mylopharyngodon piceus</i>	Black carp
Fish	<i>Oreochromus</i> , <i>Sarotherodon</i> , or <i>Tilapia</i>	Tilapia
Fish	<i>Tinca tinca</i>	Tench
Mammals	<i>Myocastor coypus</i>	Nutria
Mammals	<i>Sus scrofa</i>	Feral hog
Mollusks	<i>Corbicula fluminea</i>	Asian clam
Mollusks	<i>Dreissena polymorpha</i>	Zebra mussel
Plants	<i>Alternanthera philoxeroides</i>	Alligatorweed
Plants	<i>Bacopa egensis</i>	Brazilian water-hyssop
Plants	<i>Blyxa aubertii</i>	Blyxa
Plants	<i>Ceratopteris thalictroides</i>	Water sprite
Plants	<i>Colocasia esculenta</i>	Wild taro or Coco yam
Plants	<i>Dopatrium junceum</i>	Dopatrium
Plants	<i>Egeria densa</i>	Brazilian waterweed
Plants	<i>Eichhornia crassipes</i>	Water hyacinth
Plants	<i>Hydrilla verticillata</i>	Hydrilla or Waterthyme
Plants	<i>Imperata cylindrica</i>	Cogongrass
Plants	<i>Ipomoea cairica</i>	Mile-a-minute vine
Plants	<i>Iris pseudacorus</i>	Yellow iris
Plants	<i>Landoltia (Spirodela) punctata</i>	Dotted duckweed
Plants	<i>Lantana camera</i>	Lantana
Plants	<i>Ligustrum japonicum</i>	Japanese privet
Plants	<i>Ligustrum sinense</i>	Chinese privet
Plants	<i>Limnophila indica</i>	Indian marshweed
Plants	<i>Lonicera japonica</i>	Japanese honeysuckle
Plants	<i>Ludwigia hexapetala</i>	Uruguay seedbox
Plants	<i>Luziola peruviana</i>	Peruvian watergrass
Plants	<i>Lythrum salicaria</i>	Purple loosestrife

¹ Excludes insects. Data in this table is a compilation of USGS species reports (<http://nas.er.usgs.gov>); and Evers and Barrett-O'Leary 2002.

Group	Scientific Name	Common Name
Plants	<i>Macfadyena unguis-cati</i>	Catclawvine
Plants	<i>Marsilea macropoda</i>	Big-foot water clover
Plants	<i>Murdannia keisak</i>	Marsh dewflower
Plants	<i>Myriophyllum aquaticum</i>	Parrot feather
Plants	<i>Myriophyllum spicatum</i>	Eurasian watermilfoil or Spike watermilfoil
Plants	<i>Najas minor</i>	Brittle naiad or Brittle waternymph
Plants	<i>Nasturtium officinale</i>	Watercress
Plants	<i>Nelumbo nucifera</i>	Sacred lotus
Plants	<i>Nymphaea lotus</i>	White Egyptian lotus
Plants	<i>Nymphoides pelata</i>	Yellow floating heart
Plants	<i>Ottelia alismoides</i>	Duck lettuce
Plants	<i>Panicum repens</i>	Torpedo grass
Plants	<i>Pistia stratiotes</i>	Water lettuce
Plants	<i>Polygonum cuspidatum</i>	Japanese knotweed
Plants	<i>Potamogeton crispus</i>	Curly pondweed
Plants	<i>Pueraria montana</i>	Kudzu
Plants	<i>Rotala indica</i>	Indian toothcup
Plants	<i>Sagittaria guyanensis guyanensis</i>	Guyana arrow head
Plants	<i>Salvinia minima</i>	Common salvinia or Water spangles
Plants	<i>Salvinia molesta</i>	Giant salvinia
Plants	<i>Sapium sebiferum</i>	Chinese tallow tree or Popcorn tree
Plants	<i>Sorghum halepense</i>	Johnsongrass
Plants	<i>Tamarix ramosissima</i>	Saltcedar

Potential Invasive Species Threats to Louisiana²

Group	Scientific Name	Common Name
Crustaceans	<i>Eriocheir sinensis</i>	Chinese mitten crab
Mollusks	<i>Perna perna</i>	Brown (Mexihalo) mussel
Mollusks	<i>Perna viridis</i>	(Asian) green mussel
Plants	<i>Cylindrospermopsis raciborskii</i>	Toxic blue-green algae

² Excludes insects.

12.C Appendix C. Summary of Louisiana State Laws, Programs, and Regulations Relevant to Aquatic Invasive Species

12.C.1 Louisiana Laws

12.C.1.a La. R.S. Title 3: Agriculture and Forestry

The Louisiana Department of Agriculture and Forestry (LDAF) generally has jurisdiction over farm-raised animals and animals raised in captivity, forestry and plants; plant and animal diseases and quarantines, agricultural professions, plant and animal pests, and soil and water conservation. LDAF can either prohibit or regulate the shipment into the state any plants, farm products, or other articles of any nature from any other state or any territory or foreign country when such prohibition or regulation is necessary.¹ LDAF also has the power to prevent, control, or eradicate contagious and infectious crop and fruit diseases in order to prevent the introduction, spread, or dissemination of all crop and fruit pests and diseases.² LDAF also may prevent, control, or eradicate all crop and fruit pests, contagions, and diseases.³

In addition, Title 3 declares the Chinese tallow (*Sapium sebiferum*) a "noxious plant harmful to growth and development of other plants and pasture and may be destroyed wherever found in this state."⁴

12.C.1.b La. R.S. Title 56: Wildlife and Fisheries

The Louisiana Department of Wildlife and Fisheries (LDWF) generally has jurisdiction over animal species in the wild. In addition, Title 56 creates the Aquatic Plant Control Fund.⁵ The purpose of the Fund is aquatic weed control and eradication.⁶ The Fund, subject to annual appropriation by the legislature, is to be used solely by the LDWF's Office of Fisheries for the aquatic plant control program and cooperative research and public education by LDWF and the LSU Agricultural Center.⁷

Title 56 prohibits the import, export, transport, sale, receipt, acquirement, or purchase in interstate commerce of "any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation" of Louisiana, any other state, or the Federal government.⁸ Any attempt to commit any of the aforementioned acts is also unlawful.⁹ Furthermore, any person who knowingly engages in such conduct is subject to penalties defined in La. R.S. 56:36.¹⁰

Title 56 also prohibits the transport of wild animal or fowl of any species for restocking purposes from a site within the state, except in accordance with regulations adopted by the Louisiana Wildlife and Fisheries Commission.¹¹

Title 56 limits the importation, sale, and possession of specific exotic species. It is LDWF that has the authority to regulate or prohibit the possession, sale, or transport of any fish into Louisiana.¹² No person, firm, or corporation shall possess, sell, or cause any fish to be transported into this state by another person, firm, or corporation without written permission from the Secretary of LDWF.¹³ However, this statute is limited to certain fish species, such as carnero catfish (*Clarias batrachus*)

¹ See La. R.S. § 3:1652.

² See *id.*

³ See *id.*

⁴ La. R.S. § 3:1791.

⁵ See La. R.S. § 56:10.1.

⁶ See La. R.S. § 56:10.1(c).

⁷ See *id.*

⁸ La. R.S. § 56:15(B)(1).

⁹ See La. R.S. § 56:15(B)(2).

¹⁰ See La. R.S. § 56:15(C).

¹¹ See La. R.S. § 56:20(B).

¹² See La. R.S. § 56:319.1.

¹³ See La. R.S. § 56:319(A).

and all species of tilapia.¹⁴ Furthermore, only the Aquarium of the Americas, Audubon Institute, New Orleans, can be authorized by special permit from LDWF to possess and display piranha and Rio Grande tetra.¹⁵

Also, no person shall knowingly import or cause to be transported into Louisiana, from any other state or country without permission from the Wildlife and Fisheries Commission, certain noxious aquatic plants which "are or can be grown or submerged or partly submerged or floating in the water."¹⁶ The aquatic plant species that fall under this statute are:

- Rooting or anchoring hyacinth (*Eichhornia azurea*)
- Elodea (*Elodea canadensis*)
- Hydrilla (*Hydrilla spp.*)
- African elodea (*Lagarosiphon muscoides* and *Lagarosiphon major*)
- Eurasian watermilfoil (*Myriophyllum spicatum*)
- Marine naiad (*Najas marina*)
- Torpedograss (*Panicum repens*)
- Pickerelweed (*Pontederia spp.*)
- Giant duckweed (*Spirodela oligorrhiza*)
- Waterchestnut (*Trapa spp.*)
- Kapok tree (*Melaleuca quinquenaria*)
- Water lettuce (*Pistia stratiotes*)
- Salvinia (*Salvinia spp.*)
- Purple loosestrife (*Lythrum salicaria*)
- Water hyacinth (*Eichhornia crassipes*)¹⁷

The Wildlife and Fisheries Commission may issue permits for the importation of any of these noxious aquatic plants for scientific research.¹⁸

12.C.2 Louisiana Programs and Rules

12.C.2.a Coastwide Nutria Control Program

Title 56 of Louisiana's Revised Statutes recognizes both the deterioration of the state's coastal wetlands due to the overpopulation of nutria and the economic importance of nutria to Louisiana's fur industry.¹⁹ Therefore, the LDWF, in accordance with the Wetlands Conservation and Restoration Plan, is authorized to enter into cooperative agreements that establish a cost-sharing program as an economic incentive to trappers and coastal landowners experiencing adverse effects of the nutria overpopulation.²⁰ Not only can the Secretary of the LDWF enter into cooperative agreements with coastal landowners for trapping nutria on land owned by them, but the Secretary also has the responsibility for planning, administering, and managing the program and for monitoring the results.²¹

The program is limited to coastal Louisiana. The economic incentive payment for each nutria that is trapped is \$4 per tail delivered by registered participants to collections centers throughout coastal Louisiana. The goal of the program is to harvest up to 400,000 nutria annually from the coast. Participants are required to obtain a valid Louisiana trapping license and also must obtain permission to trap/hunt in the Program area from an appropriate private, State, or Federal landowner.

¹⁴ See *id.*

¹⁵ See La. R.S. § 56:319(D).

¹⁶ La. R.S. § 56:328(B).

¹⁷ See *id.*

¹⁸ See La. R.S. § 56:328(C).

¹⁹ See La. R.S. § 56:281.

²⁰ See *id.*

²¹ See La. R.S. § 56:282(1). See also La. R.S. § 56:282(3).

12.C.2.b Nuisance Animal Control Rule

The Louisiana Wildlife and Fisheries Commission ratified the Nuisance Animal Control Rule. This rule authorizes landowners or their designees to take specified nuisance animals, such as nutria, year round without a permit. However, the animals may only be taken by trapping or shooting during legal hours. The rule only authorizes take when the animals have proven to create a nuisance or damage to property. The burden of proof that the animals are creating a nuisance or damaging property rests with the landowner.

12.C.3 Additional State Jurisdiction Information

12.C.3.a Louisiana Air Quality Program

LDEQ has jurisdiction over the administration of Louisiana's Air Quality Program.²² Pursuant to La. R.S. § 30:2055, no person shall conduct any activity that results in the discharge of air contaminants without the appropriate permit or license as required under LDEQ regulations. LDEQ has jurisdiction over the permitting process for owners and operators of sources of air contaminant emissions in the state²³ as well as volatile organic compound emissions from industrial wastewater,²⁴ biomedical waste incinerators,²⁵ and refuse incinerators.²⁶ LDEQ also conducts investigations²⁷ and assesses penalties for violations.²⁸

12.C.3.b Emergency Response to Release of Pollutants

LDEQ regulates emergency response to the release of pollutants. The Secretary of LDEQ has the power to declare that an emergency exists upon receipt of evidence of an incident that requires immediate action "to prevent irreparable damage to the environment or a serious threat to life or safety based on recognized criteria or standards or both."²⁹ In response to such an emergency, LDEQ may issue permits, variances, or other orders that are necessary to respond to the emergency, which shall be effective immediately upon issuance, and any appeal or request for review shall not suspend the implementation of the action ordered.³⁰ Specifically, LDEQ has jurisdiction over the release or potential release of a pollutant resulting from an off-site emergency condition; any incident that has been declared an emergency by the Secretary of Environmental Quality in accordance with La. R.S. § 30:2033; and the transportation, receipt, and storage of material resulting from the cleanup and/or abatement of an off-site³¹ emergency situation.³² In addition, La. R.S. § 30:2035 created the Environmental Emergency Response Training Program. The purpose of this program is to provide or secure training "designed to instruct emergency response personnel to quickly, efficiently, and effectively respond to and address environmental problems and emergencies occurring within the area of their jurisdiction and to assist in addressing, when necessary, environmental emergencies occurring regionally."³³

12.C.3.c Hazardous Waste Control Law

LDEQ administers the Louisiana Hazardous Waste Control Law.³⁴ LDEQ has jurisdiction over the development, implementation, and enforcement of a comprehensive state hazardous waste control

²² See La. R.S. § 30:2011. See also La. R.S. § 30:2054 and LA. ADMIN. CODE Tit. 33, § 3:101.

²³ See LA. ADMIN. CODE Tit. 33, § 3:501-551.

²⁴ See LA. ADMIN. CODE Tit. 33, § 3:2153.

²⁵ See LA. ADMIN. CODE Tit. 33, § 3:2511.

²⁶ See LA. ADMIN. CODE Tit. 33, § 3:2521.

²⁷ See LA. ADMIN. CODE Tit. 33, § 3:107.

²⁸ See LA. ADMIN. CODE Tit. 33, § 1:701-705.

²⁹ La. R.S. § 30:2033. An "emergency" means "any condition that reasonably could be expected to endanger the health and safety of the public, cause significant adverse impacts to the land, water, or air environment, or cause severe property damage. This definition includes transportation-related events, abandoned containers, barrels, and other receptacles." LA. ADMIN. CODE Tit. 33, § 69:6905(A).

³⁰ See La. R.S. § 30:2033.

³¹ "Off-site" means "areas beyond the property boundary of the facility, and areas within the property boundary to which the public has routine and unrestricted access during or outside business hours." LA. ADMIN. CODE Tit. 33, § 69:6905(A).

³² See LA. ADMIN. CODE Tit. 33, § 69:6901.

³³ La. R.S. § 30:2035.

³⁴ See La. R.S. § 30:2171 et seq. "Hazardous waste" means "any waste, or combination of wastes, which because of its quantity, concentration, physical, or chemical characteristics may cause or significantly contribute to an increase in mortality or an increase in

program consistent with the Louisiana Hazardous Waste Control Law and applicable federal laws and regulations.³⁵ Furthermore, LDEQ has the authority to issue, continue in effect, revoke, modify, or deny hazardous waste transporter licenses and hazardous waste treatment, storage, and disposal facility permits and schedules of compliance.³⁶ The authority to execute minor permit actions and to issue registrations, certifications, notices of deficiency, and notification of inclusion under a general permit may be delegated by the Secretary or the appropriate Assistant Secretary to an authorized representative, notwithstanding the provisions of La. R.S. § 30:2050.26.³⁷ Although LDEQ regulates hazardous wastes generated, transported, treated, stored, and/or disposed in the state, the agency's regulations do not limit the authority granted to the Department of Natural Resources in Title 30 of the Louisiana Revised Statutes.³⁸ LDEQ regulates the discharge and reporting of point source hazardous waste, which includes water discharges, air emissions, offsite surface shipments, and spills.³⁹ The Department of Public Safety and Corrections (DPS) is authorized to promulgate regulations and oversee compliance regarding the transportation of hazardous wastes by any means of commercial or private transport.⁴⁰ By law, LDEQ advises and cooperates in the promulgation of regulations.⁴¹ If a spill occurs on the site of a generator or Treatment, Storage, and Disposal (TSD) facility, and if that spill could endanger the public health or affect the environment off-site, then LDEQ and DPS have the authority to enter the site and investigate the spill.⁴² LDEQ and DPS also work together to provide for the control and cleanup of accidental spills and other emergency situations involving hazardous waste.⁴³ LDEQ, with the advice and cooperation of the Department of Health and Human Resources and the Department of Wildlife and Fisheries, promulgates regulations providing for the identification and regulation of all hazardous waste TSD facilities.⁴⁴

12.C.3.d Louisiana Inactive and Abandoned Hazardous Waste Site Law

LDEQ administers the Louisiana Inactive and Abandoned Hazardous Waste Site Law.⁴⁵ It is within the agency's authority to develop contingency plans and adopt guidelines for the containment, closure, and post-closure maintenance of inactive and abandoned hazardous waste sites.⁴⁶ LDEQ also has the authority to develop and periodically revise cooperative agreements with LDWF, DPS, the Military Department, U.S. Environmental Protection Agency, U.S. Coast Guard, and all other appropriate local, state, and federal agencies so that personnel, equipment, and materials in possession or under control of these departments and agencies may be diverted and utilized to address inactive or abandoned hazardous waste sites under certain conditions.⁴⁷ LDEQ has the authority to coordinate the state response to a waste site with any on-scene coordinator designated by federal law.⁴⁸ However, this law does not prevent LDEQ from responding independently to an inactive or abandoned waste site where no on-scene coordinator is present or no action is being taken by the federal government.⁴⁹ In appropriate cases, LDEQ shall seek reimbursement from the designated agencies of the federal government for all costs incurred in addressing inactive or abandoned hazardous waste sites including but not limited to costs of personnel, equipment, use of equipment, and supplies.⁵⁰

serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed." La. R.S. § 30:2173.

³⁵ La. R.S. § 30:2174.

³⁶ La. R.S. § 30:2180.

³⁷ *Id.*

³⁸ See LA. ADMIN. CODE Tit. 33, § 5:105.

³⁹ See LA. ADMIN. CODE Tit. 33, § 5:1505.

⁴⁰ La. R.S. § 30:2189.

⁴¹ *Id.*

⁴² See LA. ADMIN. CODE Tit. 33, § 5:1505(C)(2).

⁴³ See LA. ADMIN. CODE Tit. 33, § 5:1525.

⁴⁴ La. R.S. § 30:2192.

⁴⁵ See La. R.S. § 30:2221.

⁴⁶ La. R.S. § 30:2224.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

12.C.3.e Louisiana Waste Reduction Law

LDEQ administers the Louisiana Waste Reduction Law.⁵¹ Under this law, the agency's jurisdiction includes but is not limited to:

- Preparation and development of a general plan for the comprehensive, omnimedia, reduction of hazardous and non-hazardous waste generation in Louisiana;
- Providing technical assistance to generators of waste, to act as a clearinghouse for information concerning waste reduction, and to identify sources of outside assistance including other state programs, universities, and professional consultants;
- Adoption and promulgation of rules and regulations consistent with applicable state and federal law for the reduction of the amount of waste generation in Louisiana, or for any programs or activities authorized by this law; and
- Development of any necessary procedures and regulations conforming to applicable state and federal laws to amend existing permits, licenses, variances, or compliance schedules necessary for the proper administration and control of waste reduction law programs.⁵²

12.C.3.f Hazardous Materials Information, Development, Preparedness, and Response Act

DPS administers the Hazardous Materials Information Development, Preparedness, and Response Act (also known as the "Right-to-Know" Law).⁵³ Louisiana policy states that its citizens have the right and responsibility to know about and protect themselves from the risks and effects of hazardous materials in their environment. State and local agencies have the information to both respond to citizen inquiries and to protect residents by:

- Providing information to physicians for emergency medical diagnosis;
- Adequately preparing for disasters;
- Centralizing and coordinating regional and local long-range planning concerning the environmental hazards in various localities; and
- Developing information on chronic health risks that may appear as the result of the presence of hazardous materials.⁵⁴

DPS' jurisdiction includes but is not limited to: the development of rules and regulations governing criteria for defining a substance as a hazardous material; the development, implementation, compilation, supervision, and management of an information system for hazardous materials; and the development of a centralized inventory reporting and notification system that allows for standardized reporting at the state, parish, and local government levels.⁵⁵ Furthermore, DPS consults with the Emergency Response Commission in developing rules and regulations for the implementation of this law.⁵⁶ It is the responsibility of the state agencies to coordinate and cooperate to further the purpose of this law. The following are relevant cooperating responsibilities for state agencies:

- The Departments of Agriculture and Environmental Quality are required to consult and coordinate with DPS regarding implementation of this law. These agencies shall, "whenever practical and feasible, coordinate reporting efforts and requirements with the department [DPS] through representation on the [Emergency Response] commission and through any established or created methods of cooperation and coordination among agencies;"
- DPS is required to forward information regarding long-term toxic effects of hazardous materials to the Department of Health and Hospitals, which coordinates such information with the Louisiana Regional Poison Control Center;

⁵¹ See La. R.S. § 30:2291 et seq.

⁵² La. R.S. § 30:2294.

⁵³ See La. R.S. § 30:2361 et seq.

⁵⁴ La. R.S. § 30:2362.

⁵⁵ La. R.S. § 30:2365.

⁵⁶ See *id.*

- DPS is required to communicate these laws and regulations to all state departments. DPS coordinates its efforts in developing a one-call notification system with all departments of state government. All departments of the state are required to adjust the reporting requirements to allow for the development of the one-call state notification system for emergency release notifications; and
- Per the one-call state notification system for emergency release notifications, proper notification of a release to DPS satisfies all emergency reporting obligations of the person making the notification, including all emergency reporting obligations of such person to the Department of Environmental Quality, other state agencies, and local response agencies.⁵⁷

12.C.3.g Oil Spill Coordinator and Oil Spill Prevention and Response Act

The Office of the Oil Spill Coordinator within the Governor's Office administers the Oil Spill Prevention and Response Act.⁵⁸ The Oil Spill Coordinator's jurisdiction includes:

- Development of a statewide oil spill prevention and response plan;
- Coordination of a response effort from all appropriate state agencies in the event of an unauthorized or threatened discharge of oil affecting or potentially affecting the land, coastal waters, or any other waters of the state;
- Coordination of operational implementation and maintenance of the oil spill prevention program;
- Administering a fund to provide to fund these activities; and
- Providing clear delineation for state coordinated response efforts in relation to jurisdictional authorities and use of state and federal funds for removal costs.⁵⁹

The Oil Spill Coordinator also, in consultation with an interagency council, adopts and promulgates rules necessary and convenient to the administration of the Oil Spill Prevention and Response Act.⁶⁰ The interagency council considers matters relating to the coordination of state prevention, response, and cleanup operations related to unauthorized discharges of oil, which include but are not limited to:

- Assisting the coordinator in the development of a statewide oil spill prevention and contingency plan;
- Assisting the coordinator in preparing an annual work plan, identifying state agency needs that must be met in order to comply with the state oil spill contingency plan;
- Developing recommendations for additional legislation; and
- Assisting the coordinator in preparing a budget necessary to implement the provisions of this Chapter.⁶¹

⁵⁷ La. R.S. § 30:2366.

⁵⁸ La. R.S. § 30:2451 et seq.

⁵⁹ La. R.S. § 30:2456.

⁶⁰ *Id.*

⁶¹ La. R.S. § 30:2458.

12.D Appendix D. Executive Order MJF 02-11: Louisiana Non-Indigenous Aquatic Species Advisory Task Force

WHEREAS, certain aquatic plant and animal species which are non-indigenous to the United States have invasively infested the waters of the state of Louisiana and/or the United States (hereafter "non-indigenous aquatic species"), posing a threat to the state of Louisiana's indigenous aquatic species and native ecosystems;

WHEREAS, non-indigenous aquatic species continue to be unintentionally introduced into non-infested waters of the state of Louisiana by operators of recreational and commercial vessels, through aquaculture, and by aquarium owners, suppliers and retailers; and

WHEREAS, the state of Louisiana and its citizens will be best served by public and private scientific communities partnering with federal agencies and the state of Louisiana through the Department of Wildlife and Fisheries to develop an environmentally compatible means to contain, control, eradicate, and/or prevent the introduction of non-indigenous aquatic species in the waters of the state of Louisiana and through an advisory task force charged with: compiling information on non-indigenous aquatic species; providing a forum for the scientific community for coordination and creation of methods, actions, plans, programs, and/or technology to prevent, contain, control, and/or eradicate infestations of non-indigenous aquatic species; minimizing the impact of non-indigenous species on native ecosystems; and recommending a management plan to contain, control, eradicate, and/or prevent the introduction of non-indigenous aquatic species while preserving and/or restoring native ecosystems;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The Louisiana Non-Indigenous Aquatic Species Advisory Task Force (hereafter "Task Force") is established within the Department of Wildlife and Fisheries.

SECTION 2: The duties of the Task Force shall include, but are not limited to, the following:

- A. compiling information, data, methods, actions, programs, and/or technologies on or related to aquatic plant and animal species non-indigenous to the state of Louisiana and/or the United States which invasively infest the waters of the state of Louisiana and/or the United States (hereafter "non-indigenous aquatic species"), including hydrilla, salvinia, water hyacinth, zebra mussels and Asian carp, particularly on issues related to the prevention, containment, control and/or eradication of non-indigenous aquatic species in a manner that protects, preserves and/or restores native ecosystems and indigenous aquatic species;
- B. identifying all agencies of and entities in the state of Louisiana which have interaction or contact with, or encompass, address, investigate, and/or study nonindigenous aquatic species, or nuisance and/or invasive aquatic plants and/or animals; identifying the purpose, duties, and functions of each agency and/or entity; and identifying a means to coordinate the efforts, functions and/or resources of each agency and/or entity with the Task Force and/or with other agencies and/or entities;
- C. recommending a management plan for the prevention, control, containment, and/or eradication of nonindigenous aquatic species in a manner that protects, preserves and/or restores native ecosystems and indigenous aquatic species, particularly addressing the prevention of the unintentional spread of non-indigenous aquatic species to uninfested fresh, salt, and brackish waters within the state of Louisiana;
- D. identifying and analyzing potential commercial and/or productive uses of non-indigenous aquatic species;
- E. if needed, recommending legislation to address issues related to the prevention, control, containment and/or eradication of non-indigenous aquatic species in a manner that protects, preserves, and/or restores native ecosystems and indigenous aquatic species; and

- F. identifying all relevant federal, state, and private funding sources that may be used to control, contain, eradicate, and/or prevent the introduction of non-indigenous aquatic species in a manner that protects, preserves and/or restores native ecosystems and indigenous aquatic species.

SECTION 3: By July 1, 2003, the Task Force shall submit a final report to the governor on the issues set forth in Section 2 of this Order. A preliminary report on the issues, including recommended legislation, shall be submitted to the governor by December 31, 2002.

SECTION 4: The Task Force shall be composed of a maximum of twenty-nine (29) members selected as follows:

- A. the governor, or the governor designee;
- B. the secretary of the Department of Wildlife and Fisheries, or the secretary's designee;
- C. the secretary of the Department of Natural Resources, or the secretary's designee;
- D. the secretary of the Department of Environmental Quality, or the secretary's designee;
- E. the commissioner of the Department of Agriculture and Forestry, or the commissioner's designee;
- F. the president of the Louisiana Senate, or the president's designee;
- G. the speaker of the House of Representatives, or the speaker's designee;
- H. the district commander of the Eighth Coast Guard District, or the district commander's designee;
- I. the district engineer of the United States Army Corps of Engineers, New Orleans District, or the district engineer's designee;
- J. the district chief, United States Geological Survey, Water Resources Division, or the district chief's designee;
- K. the region supervisor, United States Fish and Wildlife Service, Lafayette Office, or the region supervisor's designee;
- L. the state plant pest director, United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, or the state plant pest director's designee;
- M. the chancellor of the Louisiana State University, College of Agriculture, or the chancellor's designee;
- N. the chancellor of the University of New Orleans, or the chancellor's designee;
- O. the director of the Center for Bioenvironmental Research, Xavier University, or the director's designee;
- P. the director of the Center for Bioenvironmental Research, Tulane University, or the director's designee;
- Q. the chancellor of the University of Louisiana at Lafayette, or the chancellor's designee;
- R. the executive director of the Louisiana Wildlife Federation, or the executive director's designee;
- S. the president of the Louisiana Farm Bureau Association, or the president's designee;
- T. the president of the Louisiana Nursery and Landscape Association, or the president's designee;
- U. the president of the Louisiana Marine and Motorcycle Trades Association, or the president's designee;
- V. the executive director of Louisiana Sea Grant Program, or the executive director's designee;
- W. the director of the Barataria-Terrebonne National Estuary Program, or the director's designee;
- X. five (5) representatives of businesses and industries located in the state of Louisiana that may be adversely affected by the spread or existence of non-indigenous aquatic species; and
- Y. one (1) member at-large.

SECTION 5: The chair of the Task Force shall be appointed by the governor from the membership of the Task Force.

SECTION 6: The Task Force shall meet at regularly scheduled intervals and at the call of the chair.

SECTION 7:

- A. Task Force members shall not receive additional compensation or a per diem from the Office of the Governor for serving on the Task Force.
- B. Task Force members who are an employee or an elected public official of the state of Louisiana or a political subdivision of the state of Louisiana may seek reimbursement of travel expenses, in accordance with PPM 49, from their employing and/or elected department, agency and/or office.

- C. Task Force members who are also a member of the Louisiana Legislature may seek a per diem from the Louisiana Senate or House of Representatives, as appropriate, for their attendance at Task Force meetings and/or service on the Task Force.

SECTION 8: Support staff, facilities, and resources for the Task Force shall be provided by the Department of Wildlife and Fisheries.

SECTION 9: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate with the Task Force in implementing the provisions of this Order.

SECTION 10: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 4th day of June, 2002.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0205#001

12.E Appendix E. Louisiana Aquatic Invasive Species Council Act

ENROLLED

ACT NO. 185

Regular Session, 2004

SENATE BILL NO. 433

BY SENATOR THEUNISSEN AND REPRESENTATIVE PIERRE

AN ACT

To enact R.S. 36:610(J) and Subpart A-1 of Part VII of Chapter 1 of Title 56 of the Louisiana Revised Statutes of 1950, comprised of R.S. 56:360.1 through 360.3, relative to non-indigenous aquatic species; to create the Louisiana Aquatic Invasive Species Council and the Louisiana Aquatic Invasive Species Advisory Task Force; to provide for their powers, duties, functions, and responsibilities; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 36:610(J) is hereby enacted to read as follows:

§610. Transfer of agencies to Department of Wildlife and Fisheries

R.S. 36:610(J) is all new law.

J. The Louisiana Aquatic Invasive Species Council and the Louisiana Aquatic Invasive Species Advisory Task Force (R.S. 56:360.1 et seq.) are placed within the Department of Wildlife and Fisheries and shall exercise and perform their powers, duties, functions, and responsibilities in the manner provided for agencies transferred in accordance with Part III of Chapter 22 of this Title. 17

Section 2. Subpart A-1 of Part VII of Chapter 1 of Title 56 of the Louisiana Revised Statutes of 1950, comprised of R.S. 56:360.1 through 360.3, is hereby enacted to read as follows:

SUBPART A-1. AQUATIC INVASIVE SPECIES 21

Subpart A-1 is all new law.

§360.1. Louisiana Aquatic Invasive Species Council

R.S. 56:360.1 is all new law.

A. The Louisiana Aquatic Invasive Species Council is hereby created and shall be composed of the following members or their designees:

- (1) The governor.
- (2) The secretary of the Department of Wildlife and Fisheries.
- (3) The secretary of the Department of Natural Resources.
- (4) The secretary of the Department of Environmental Quality.
- (5) The commissioner of agriculture.
- (6) The secretary of the Department of Transportation and Development.
- (7) The secretary of the Department of Health and Hospitals.
- (8) The state superintendent of education.
- (9) The secretary of the Department of Culture, Recreation and Tourism.

B. The council shall be chaired by the secretary of the Department of Wildlife and Fisheries or his designee. The council shall elect a vice chair who shall not be an employee of the Department of Wildlife and Fisheries. In addition, the council shall elect other officers as the council deems necessary. The Department of Wildlife and Fisheries shall provide staff necessary for the council.

C. The council shall meet at least once per quarter, but may meet more often as necessary. The members of the council shall not be compensated for their services but may seek travel reimbursements from their respective agencies under the guidelines for state employees provided by the division of administration. Meetings of the council shall be subject to laws regarding open meetings, R.S. 42:4.1 et seq., and records kept by the council shall be subject to laws regarding public records, R.S. 44:1 et seq.

§360.2. The Louisiana Aquatic Invasive Species Task Force 24

R.S. 56:360.2 is all new law. 25

A. In addition to the Louisiana Aquatic Invasive Species Council, there is hereby created the Louisiana Aquatic Invasive Species Task Force to serve in an advisory capacity to the council. The task force shall be composed of members or their designees as follows:

- (1) The district commander of the Eighth Coast Guard District.
- (2) The district engineer of the U.S. Army Corps of Engineers, New Orleans District.
- (3) The district chief for the Water Resources Division of the U.S. Geological Survey, Louisiana district.
- (4) The Region 4 director of the U.S. Fish and Wildlife Service, Atlanta office.
- (5) The state plant health director for the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine.
- (6) The chancellor of the Louisiana State University Agricultural Center.
- (7) The chancellor of the University of New Orleans.
- (8) The director of the Center for Bioenvironmental Research, Tulane University and Xavier University.
- (9) The president of the University of Louisiana at Lafayette.
- (10) The executive director of the Louisiana Wildlife Federation.
- (11) The regional administrator of the National Park Service, U.S. Department of Interior.
- (12) The president of the Louisiana Farm Bureau Association.
- (13) The president of the Louisiana Marine and Motorcycle Trades Association.
- (14) The executive director of the Louisiana Sea Grant Program.
- (15) The director of the Barataria-Terrebonne National Estuary Program.
- (16) The executive director of the Louisiana Landowners Association.
- (17) The executive director of the Louisiana Nursery and Landscape Association.
- (18) The executive director of the Louisiana Forestry Association.
- (19) The president of the Ports Association of Louisiana.
- (20) The executive director of the Gulf States Marine Fisheries Commission.
- (21) The president of the Louisiana Chemical Association.
- (22) The executive director of the Steamship Association of Louisiana.
- (23) A representative of the electrical utility industry in Louisiana appointed by the Louisiana Electric Utilities Association.
- (24) The president of Louisiana Mid-Continent Oil and Gas Association.
- (25) The chairman of the Louisiana Aquaculture Advisory Task Force.
- (26) The chief of the National Oceanographic and Atmospheric Administration Habitat Conservation Division Office in Louisiana.
- (27) The state veterinarian employed by the Department of Agriculture and Forestry.
- (28) The state entomologist appointed by the commissioner of the Department of Agriculture and Forestry.
- (29) The executive director of the State Soil and Water Conservation Committee.
- (30) The director of horticulture and quarantine programs for the Department of Agriculture and Forestry.
- (31) An Oyster Task Force member appointed by the chairman of the Oyster Task Force.

B. The task force shall be chaired by the chair of the council and shall meet at the call of the chair. The members of the task force shall not be compensated for their services on the task force but may seek travel reimbursements from their respective agencies under the guidelines for state employees provided by the division of administration. Meetings of the task force shall be subject to laws regarding open meetings, R.S. 42:4.1 et seq., and records of the task force shall be subject to laws regarding public records, R.S. 44:1 et seq. 24

C. The chair of the council may appoint committees of the task force. The chair of the council shall appoint the chair of any committee and shall designate the functions and responsibilities of each committee appointed. The chair may appoint on an ad hoc basis committee members who are not members of either the council or the advisory task force.

§360.3. Powers, duties, functions, and responsibilities of the Louisiana Aquatic Invasive Species Council and Task Force

R.S. 56:360.3 is all new law.

A. The council, with the advice and assistance of the task force, shall do the following things:

(1) Coordinate the implementation of Louisiana Invasive Aquatic Species Management Plan, which was adopted by the Louisiana Non-Indigenous Aquatic Species Advisory Task Force created by Executive Order MJF 02-11.

(2) Coordinate and support through collaboration and full communication all efforts in the state, the region, and the nation, as appropriate, to control, prevent or eradicate invasive or potentially invasive aquatic species.

(3) Coordinate the implementation of the management plan's goals to prevent and control the introduction of new non-indigenous aquatic species into Louisiana; to control the spread and impact of existing invasive aquatic species; and to eradicate already established invasive aquatic species through the development of policies to achieve the following four objectives:

(a) Prevent and control the introduction or re-introduction of invasive or potentially invasive non-indigenous aquatic species through education about species and pathways of introduction, targeting the general public, schools, industries, government agencies, and other organizations.

(b) Eliminate established invasive aquatic species through monitoring, early detection, rapid response, and early eradication.

(c) Control the spread of established invasive aquatic species through cooperative management activities designed to minimize impact where eradication is impossible.

(d) Prevent the introduction of invasive or potentially invasive non-indigenous aquatic species or the spread of existing invasive or potentially invasive non-indigenous aquatic species.

(4) Identify all funding sources which may be available for use by the council or the task force to control, contain, eradicate, or prevent the introduction or spread of invasive or potentially invasive non-indigenous aquatic species in an effort to preserve and protect our native ecosystems and indigenous aquatic species.

(5) Submit to the legislature every two years a status report on the management plan and its implementation. Such report shall be submitted prior to the opening day of the regular session in even-numbered years and shall comply with the requirements of R.S. 24:772. Any changes to the plan shall be adopted and promulgated under the provisions of the Administrative Procedure Act and shall be subject to oversight by the House Committee on Natural Resources and the Senate Committee on Natural Resources.

B. The task force shall act in an advisory capacity to the council in the development of data and information relative to non-indigenous aquatic species and the implementation and revision of the management plan. The task force shall meet with the council at the call of the chair of the council. The task force shall seek the advice and consultation of tribal entities when appropriate.

Section 3. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and

subsequently approved by the legislature, this Act shall become effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

12.F Appendix F. Summary of Federal Laws, Programs, and Regulations Relevant to Aquatic Invasive Species

12.F.1 Federal Laws

12.F.1.a Clean Water Act, 33 U.S.C. § 1251 *et seq.*

The Clean Water Act (CWA) protects the Nation's waters, including lakes, rivers, aquifers, and coastal areas.¹ The CWA includes a framework of standards and requires the development of technology and financial assistance to address the causes of pollution and poor water quality.² The CWA provides for a permitting process to protect wetlands and other aquatic habitats in order to ensure environmentally sound development.³ The Environmental Protection Agency (EPA), the Department of Defense (DOD), and the U.S. Coast Guard share authority to manage incidental liquid discharges, including clean ballast water, from Armed Forces vessels through the Uniform National Discharge Standards.⁴

The CWA's permitting process may provide EPA with some authority to control and manage invasive species. EPA currently is reviewing its authority under the CWA with regard to invasive species.⁵

12.F.1.b Coastal Zone Management Act, 16 U.S.C. § 1451 *et seq.*

The Coastal Zone Management Act (CZMA) is another avenue by which invasive species can be controlled and managed. Under the CZMA, the Federal and State governments work together to "preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations."⁶ Specifically, the Federal government is to encourage and assist the States to achieve "wise use" of land and water resources in the coastal zone.⁷ Issues surrounding invasive species could be incorporated into States' Coastal Zone Management Plans through modification or amendment, subject to the approval by the Department of Commerce (DOC).⁸ Section 1455a(b) allows the DOC to make grants to eligible coastal states to assist them in preserving or restoring specific areas, redevelopment of deteriorating and underutilized urban waterfronts and ports, access to public beaches, or development of a permit process to regulate aquaculture facilities in the coastal zone. The DOC also shall assist States in identifying and obtaining technical assistance and other financial assistance so they may carry out the objectives of the CZMA.⁹

The CZMA calls for coordination and cooperation between the DOC and other interested Federal agencies to the maximum extent practicable.¹⁰ The agency also shall not approve any coastal zone management program submitted by any State pursuant to Section 1455 unless the views of Federal agencies "principally affected" by such program have been considered.¹¹

Section 1461 establishes the National Estuarine Research Reserve System. Research in designated national estuarine reserves is to help identify and establish priorities of coastal management issues.¹² This program could sponsor monitoring and other research of invasive species.

¹ See 33 U.S.C. § 1251(a).

² See *id.*

³ See *id.* § 1342.

⁴ See *id.* U.S.C. § 1322.

⁵ See National Agricultural Library for the National Invasive Species Council, National Management Plan: Appendix 3 - Legal Authorities Related to Invasive Species. Retrieved 25 July 2003 from www.invasivespecies.gov/council/appendix3.shtml.

⁶ See 16 U.S.C. § 1452(1).

⁷ See *id.* § 1454(2).

⁸ See *id.* §1455(e).

⁹ See *id.* § 1455a(f).

¹⁰ See *id.* § 1456(a).

¹¹ See *id.* § 1456(b).

¹² See *id.* § 1461(c).

12.F.1.c Cooperative Forestry Assistance, 41 U.S.C. § 2104

Under the Cooperative Forestry Assistance (CFA), the Department of Agriculture (USDA) is responsible for protecting the health of the National forests and on other lands in the United States. Protection of forests from invasive species is included in the CFA. The USDA may conduct surveys to "detect and appraise insect infestations and disease conditions ... and establish a monitoring system ... to determine detrimental changes or improvements that occur over time"¹³ The USDA may also implement the biological, chemical, and mechanical measures necessary "to prevent, retard, control, or suppress incipient, potential, threatening, or emergency insect infestations and disease conditions affecting trees."¹⁴ Furthermore, the USDA is required to provide technical information, advice, and related assistance on available techniques to maintain healthy forests.¹⁵

Included is the USDA's authority to appropriate funds to implement this policy to other Federal agencies to prevent, retard, control, or suppress insect infestations and diseases affecting trees on said lands.¹⁶ Moreover, the USDA may contract or enter into a cooperative agreement to provide financial assistance to State forestry officials or the equivalent thereof and private forestry and other organizations to monitor forest health and to protect forest lands. Such State officials or private or other organizations shall make contributions in the amount and manner deemed appropriate by the USDA.¹⁷

However, the CFA only applies to insect infestations and disease conditions affecting trees. There is no authority in the CFA for invasive plant species.

12.F.1.d Endangered Species Act, 16 U.S.C. § 1531 et seq.

The U.S. Department of the Interior (DOI) is in charge of implementing The Endangered Species Act (ESA). The ESA relates to invasive species that pose a threat to local endangered species.¹⁸ If invasive species threaten local endangered species, then the ESA could be used as a basis for control and eradication. However, the ESA does not contain specific language that directly relates to invasive species or language that mentions how the DOI could regulate particular pathways by which invasive species may become a threat to endangered species.

12.F.1.e Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) focuses on Federal control of pesticide distribution, sale, and use. The EPA studies the effects of pesticide use and requires users to register when purchasing certain pesticides. All pesticides used in the United States must be registered with EPA.¹⁹ Registration ensures proper labeling and that if pesticides are used in accordance with specification, then they will not cause unreasonable adverse effects on the environment.²⁰

If pesticides are used to control or reduce the impacts of invasive species, then FIFRA will apply. FIFRA also gives EPA review authority for biological control agents when they are used to control invasive pests.²¹

12.F.1.f Federal Noxious Weed Act, 7 U.S.C. § 2801 et seq.

The Federal Noxious Weed Act (FNWA) has been replaced by the Plant Protection Act, 7 U.S.C. § 7701 et seq., except for Section 2814.

Section 2814 of the FNWA requires each Federal agency to manage "undesirable plants"²² on Federal lands. They are to develop and coordinate a management program to control such plants

¹³ 16 U.S.C. § 2104(b)(1).

¹⁴ *Id.* § 2104(b)(2), (3).

¹⁵ *See id.* § 2104 (b)(4).

¹⁶ *See id.* § 2104(e).

¹⁷ *See id.* § 2104(g).

¹⁸ *See* 16 U.S.C. § 1533.

¹⁹ *See* 7 U.S.C. § 136a for registration requirements and procedure and classification of pesticides.

²⁰ *See id.*

²¹ *See id.*

on said land and to enter into cooperative agreements with State agencies to implements their management plans. However, a Federal agency is not required to carry out a management plan on Federal lands unless similar programs are being implemented on State or private lands in the same area.

12.F.1.g Federal Seed Act, 7 U.S.C. § 1551 et seq.

The Federal Seed Act (FSA) regulates interstate and foreign commerce in seeds, requires labeling to prevent misrepresentation of seeds in interstate commerce; and requires certain standards with respect to certain imported seeds. The FSA may offer protection against invasive species entering the States because it requires labeling of seeds entering interstate commerce and requires standards for certain imported seeds.

It unlawful for a person to transport or deliver for transportation in interstate commerce any agricultural seeds or mixture thereof unless each container bears a label that includes information in accordance with regulations and prescribed by law under Section 402 of the FSA.²³ One piece of required information on a label is the origin of each agricultural seed, which has been designated by the USDA as one on which knowledge of the origin is important from the standpoint of crop production.²⁴ This section specifically includes noxious weed seeds in its labeling requirement.

The FSA requires all persons transporting, delivering for transportation, in interstate commerce, agricultural seeds shall keep for three (3) years a complete record of origin, treatment, germination, and purity of each lot of such agricultural seeds. This requirement also applies to all persons transporting or delivering for transportation, in interstate commerce, vegetable seeds.²⁵

The FSA lists exemptions to the labeling and recording requirements. The provisions of Sections 201 and 202 do not apply to any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier, provided that such carrier is not engaged in processing or merchandising seed subject to the provisions of this Act.²⁶ Such provisions also do not apply to seeds produced by any farmer on his own premises and sold by him directly to the consumer, provided that such farmer is not engaged in the business of selling seeds not produced by him.²⁷ However, such seeds produced or sold when transported or offered for transportation to any State, Territory, or District, shall not be exempted from Sections 201 and 202 unless the seeds are in compliance with the operation and effect of the laws of such State, Territory, or District, which are enacted in the exercise of its police power.²⁸

The FSA prohibits the dissemination of any false advertisement concerning seed, by the United State mail or in interstate and foreign commerce, in any manner or by any means, including radio broadcasts.²⁹

Finally, the FSA prohibits the importation into the United States of any agricultural or vegetable seeds if any such seeds contain noxious weed seeds or the labeling of which is false or misleading in any respect.³⁰

12.F.1.h Fish and Wildlife Coordination Act, 16 U.S.C. § 661 et seq.

One of the purposes of the Fish and Wildlife Coordination Act (FWCA) is to give wildlife conservation equal consideration and coordination with other features of water resource development programs "through the effectual and harmonious planning, development,

²² "Undesirable plant species" means "plant species that are classified as undesirable, noxious, harmful, exotic, injurious, or poisonous, pursuant to State or Federal law." 7 U.S.C. § 2814(e)(7).

²³ See 7 U.S.C. § 201.

²⁴ See *id.*

²⁵ See *id.* § 202.

²⁶ See *id.* § 203.

²⁷ See *id.*

²⁸ See *id.*

²⁹ See *id.* § 205.

³⁰ See *id.* § 301.

maintenance, and coordination of wildlife conservation and rehabilitation ..."³¹ The FWCA requires the DOI to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations to control, manage, and protect wildlife resources.³²

The FWCA encourages consultation between agencies. If an impoundment, diversion, or deeper channeling of the waters of any stream or other water body by any Department or agency of the United States or by any public or private agency under Federal permit or license is necessary, then that Department or agency first shall consult with the Fish and Wildlife Service, DOI, and the head of the agency exercising administration over the wildlife resources that may be affected by the action.³³ Furthermore, the DOI shall make reports and recommendations on the wildlife aspects of such projects.³⁴ Such goals and cooperation between Departments and agencies could encompass control and management of invasive species through research and recommendations.

Projects to control and manage invasive species also may be funded through grants and cooperative agreements.³⁵

12.F.1.i Hawaii Tropical Forest Recovery Act, 16 U.S.C. § 4502a et. seq

The Hawaii Tropical Forest Recovery Act (HTFRA), enacted in 1992, largely amended the International Forestry Cooperation Act. (See below.) The HTFRA authorizes the USDA's Forest Service to protect indigenous plants and animals from invasions, establish biological control agents for invasive species that threaten natural ecosystems, establish monitoring systems to identify baseline conditions and determine detrimental changes or improvements over time, provide assistance to States with tropical forests.³⁶

12.F.1.j International Forestry Cooperation Act, 16 U.S.C. § 4501 et. seq

The main focus of the International Forestry Cooperation Act (IFCA) is to provide assistance to foreign countries that promotes sustainable development and global environmental stability for the world's forests.³⁷ The IFCA concentrates on key nations which "could have a substantial impact on emissions of greenhouse gases related to global warming."³⁸ Under the IFCA the Secretary of the USDA provide assistance in the form of grants, contracts, or cooperative agreements to prevent and control invasions from nonindigenous animals, plants, and pathogens in tropical forests.³⁹

Under the authority of the IFCA, the USDA's Forest Service, as part of its Forest Research and Development Program, conducts research and development for management and protection of vegetation, fish, and wildlife and delivers research and development products in water and air sciences, resource valuation and use, and inventory and monitoring.⁴⁰ This program addresses all aspects of the USDA's invasive species activities, including prevention, control, rapid response, management, and restoration of areas affected by invasive species.⁴¹

12.F.1.k National Forest Management Act, 16 U.S.C. § 1604

Congress has required that the USDA develop and maintain forests plans for each administrative unit of the National Forest System.⁴² However, site-specific management decisions must be consistent with the relevant forest plan for that site, or the plan itself must be amended to permit the activity.⁴³ Moreover, each plan must be consistent with the National Environmental Policy Act, the

³¹ 16 U.S.C. § 661.

³² *See id.* § 661(1).

³³ *See id.* § 662(a).

³⁴ *See id.* § 662(b).

³⁵ *See id.* § 663. *See also* §§ 661 and 662.

³⁶ *See* 16 U.S.C. § 4501a.

³⁷ *See* 16 U.S.C. § 4501(b).

³⁸ *Id.* § 4501(a).

³⁹ *See id.* § 4502a(b).

⁴⁰ USDA Forest Service, Research and Development. Retrieved 26 February 2003 from <http://www.fs.fed.us/research>.

⁴¹ *See id.*

⁴² *See* 16 U.S.C. § 1604(f).

⁴³ *See id.* § 1604(i).

Multiple-Use and Sustained-Yield Act, and other Federal environmental laws.⁴⁴ Since forest management is specific to each area, management may relate to invasive species as it becomes an issue in particular forest areas.

12.F.1.I Lacey Act, 18 U.S.C. § 42 *et seq.* and the "Other" Lacey Act, 16 U.S.C. § 3371 *et seq.*

There are two separate Lacey Acts. The Lacey Act, 18 U.S.C. § 42, is a law administered by the U.S. Fish and Wildlife Service that prohibits the importation of into the U.S. or any of its territories certain categories of animal species. The "other" Lacey Act, 16 U.S.C. § 3371 *et seq.*, is a separate provision administered by the DOI, DOC, and USDA. The "other" Lacey Act generally makes it unlawful to import, export, sell, receive, acquire, purchase (or attempt to commit any such act) certain animals and plants in violation of Federal, State, Tribal, or foreign law. Each has common purposes and restrictions, as well as limitations on how they may be utilized to control and manage invasive species.

18 U.S.C. § 42(a)(1) of the Lacey Act prohibits importation of animal species that the Secretary of the Interior has prescribed by regulation as "injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States." However, the Secretary may allow the importation for zoological, educational, medical, and scientific purposes, where such importation would otherwise be prohibited by this Act.⁴⁵ Also, the Act does not restrict importation by Federal agencies for their own use.⁴⁶

It is important to note that Section 42 contains restrictions that limit DOI's ability to fully address the control and management of invasive species. First, Section 42 is limited to specific animals. It applies only to those animal species specified in the Act plus mammals, fish, birds, reptiles, amphibians, mollusks, and crustaceans. In addition, the Lacey Act seems to exclude domesticated birds and mammals because only "wild"⁴⁷ birds and mammals are specified in the Act. Finally, the Act excludes from regulation under the Lacey Act species already regulated under the Plant Pest Act. The Act specifically states that § 42 does not authorize "any action with respect to the importation of any plant pest as defined by the FPPA, insofar as such importation is subject to regulation under that Act."⁴⁸

16 U.S.C. § 3372(a)(1) (i.e., the "other" Lacey Act) prohibits the import, export, sale, receipt, acquirement, or purchase of any wildlife, fish, or plant "taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law." This section also prohibits the import, export, or transport in interstate commerce any container or package containing any fish or wildlife unless it has been previously marked, labeled, or tagged in accordance with regulations issued pursuant to the "other" Lacey Act (OLA).

Sale or purchase of fish or wildlife for the illegal taking, acquiring, receiving, transport, or possession of fish or wildlife is prohibited by the OLA.⁴⁹ It is also unlawful for a person to make or submit a false record, account, label for, or any false identification of any fish, wildlife, or plant which has been, or is intended to be, imported, exported, sold, purchased, or received from any foreign country; or transported in interstate or foreign commerce.⁵⁰

⁴⁴ See *id.* § 1604(e), (g)(1).

⁴⁵ See *id.* § 42(3).

⁴⁶ See *id.*

⁴⁷ According to 16 U.S.C. § 42(a)(1), "wild" refers to "any creatures that, whether or not raised in captivity, normally are found in a wild state."

⁴⁸ See *id.* § 42(a)(1).

⁴⁹ "Sale" of fish or wildlife in violation of this Act means a person for money or other consideration who offers or provides guiding, outfitting, or other services or a hunting or fishing license or permit. 16 U.S.C. § 3372(c)(1)(A)-(B). "Purchase" of fish or wildlife in violation of this Act means a person who obtains for money or other consideration guiding, outfitting, or other services or a hunting or fishing license or permit. 16 U.S.C. § 3372(c)(2)(A)-(B).

⁵⁰ 16 U.S.C. § 3372(d)(1)-(2).

All fish, wildlife, or plants imported, exported, transported, sold, received, acquired, or purchased in violation of the OLA or any regulation thereto shall be subject to forfeiture to the United State as well as any civil or criminal penalties that may be assessed.⁵¹ In addition, all vessels, vehicles, aircraft, or other equipment used to aid in the violation shall be subject to forfeiture to the United States if the facts meet certain criteria. If the owner at the time of the alleged violation was a consenting party or privy thereto or in the exercise of due care should have known his property would be used in a criminal violation of the OLA, and the violation involved the sale or purchase of or the offer or intent to sell or purchase fish, wildlife, or plants, then his property shall be subject to forfeiture.⁵²

The OLA has restrictions similar to those in 18 U.S.C. § 42. The definition of "fish or wildlife" is also limited to wild animals, though it is broader than the one in Section 42.⁵³ What the OLA includes that Section 42 does not include is plant species. However, the definition of "plant" is limited to "any wild member of the plant kingdom, including roots, seeds, and other parts thereof (but excluding common food crops and cultivars), which is indigenous to any State and which is either listed on an appendix to the Convention on International Trade in Endangered Species of Wild Flora and Fauna or listed pursuant to any State law that provides for the conservation of species threatened with extinction."⁵⁴ This means that any plant that falls outside of this definition is not covered, and some plant species that are not covered may be invasive plant species in Louisiana that need to be controlled and managed.

There are exceptions to prohibitions under the OLA. For instance, the prohibitions of the OLA do not apply to activities regulated by plan under the Magnuson-Stevenson Fishery Management and Conservation Act. Second, the provisions of paragraph 1 of subsection 3(a) of the OLA do not apply to any activity regulated by a fishery management plan in effect under the Magnuson-Stevenson Fishery Management and Conservation Act. Also, the OLA does not prevent the States or Indian tribes from making or enforcing laws or regulations as long as they are consistent with the OLA.⁵⁵

12.F.1.m Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801 et seq.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act) may apply to invasive species and their pathways through Section 1855(b). The Essential Fish Habitat (EFH) provisions allow for review of Federal and/or other actions that could affect EFH with authority to make recommendations for conservation of EFH.

Specifically, the DOC, in consultation with participants in the fishery, shall provide each Fishery Management Council with recommendations and information regarding each fishery under that Council's authority.⁵⁶ The purpose is to assist the Councils in identification of essential fish habitat, the adverse impacts on that habitat, and the actions that should be considered to ensure the conservation and enhancement of that habitat.⁵⁷ Also, the DOC shall review programs it administers and ensure that any relevant programs further the conservation and enhancement of essential fish habitat.⁵⁸ Finally, the DOC shall coordinate with and provide information to other Federal agencies to further the conservation and enhancement of essential fish habitat.⁵⁹

In a similar regard, each Federal agency shall consult with the DOC with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such

⁵¹ See 16 U.S.C. § 3374(1).

⁵² 16 U.S.C. § 3374(a)(2)

⁵³ The definition of "fish and wildlife" in 16 U.S.C. § 3371(a) includes "any wild animal, whether alive or dead, including without limitation any wild mammal, bird, reptile, amphibian, fish, mollusk other invertebrate."

⁵⁴ 16 U.S.C. § 3371(f).

⁵⁵ 16 U.S.C. § 3378(a)

⁵⁶ See 16 U.S.C. § 1855(b)(1)(B).

⁵⁷ See *id.*

⁵⁸ See 16 U.S.C. § 1855(b)(1)(C).

⁵⁹ See 16 U.S.C. § 1855(b)(1)(D).

agency that may adversely affect any EFH identified under this Act.⁶⁰

Each Council may comment on and make recommendations to the DOC and any Federal or State agency concerning any activity authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by any Federal or State agency that may affect habitat, including EFH, of a fishery resource under its authority.⁶¹ The Council shall comment on and make recommendations to the DOC and any other Federal or State agency concerning activity that, in the view of the Council, is likely to substantially affect the habitat, including EFH, of an anadromous fishery resource under its authority.⁶²

12.F.1.n Multiple-Use Sustained-Yield Act, 16 U.S.C. § 528 et seq.

The policy behind the Multiple-Use Sustained-Yield Act (MUSY) is that the "national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes."⁶³ The MUSY authorizes the USDA to develop and administer renewable surface resources of the national forests and to cooperate with interested State and local government agencies and others in the development and management of national forests.⁶⁴

Therefore, the MUSY may be a possible source of authority if invasive species threaten the vitality of national forests and their ability to produce a sustained yield of products and services under the principles of multiple use.⁶⁵

12.F.1.o National Environmental Policy Act, 42 U.S.C. § 4321 et seq.

The National Environmental Policy Act (NEPA) applies to all departments and agencies. The purposes of NEPA that are relevant here are: to declare a national policy that will encourage productive and enjoyable harmony between man and his environment; to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; and to enrich the understanding of the ecological systems and natural resources important to the nation.⁶⁶ NEPA calls for cooperation between agencies to share information and coordinate efforts in order to administer NEPA to the fullest extent possible.⁶⁷ If invasive species pose a threat to the environment through intentional introductions related to major Federal actions, then NEPA requires the Federal government agencies to consider the effects of their actions by preparing Environmental Impact Statements (EIS).⁶⁸ That is, the effects of invasive species, if they would be harmful to the environment, must be included in the EIS. However, the Animal and Plant Health Inspection Service (APHIS) may approve and issue permits for importing invasive species after the preparation of an Environmental Assessment (EA).⁶⁹ Permits for importing invasive

⁶⁰ See 16 U.S.C. § 1855(b)(2).

⁶¹ 16 U.S.C. § 1855(b)(3)(A).

⁶² See 16 U.S.C. § 1855(b)(3)(B).

⁶³ 16 U.S.C. § 528.

⁶⁴ See *id.* § 529.

⁶⁵ *Id.* "Multiple use" means the management of all the various renewable surface resources of the national forests so that they are used in the combination that best meets the needs of the American people. See *id.* § 531(a). "Sustained yield" means the achievement and maintenance "in perpetuity" (i.e., forever) of a high level annual or regular periodic output of resources without impairment of the productivity of the lands of the national forests. See *id.* § 531(b).

⁶⁶ 42 U.S.C. § 4321

⁶⁷ 42 U.S.C. § 4332

⁶⁸ An EIS is a document that describes the effects on the environment as a result of a proposed Federal action. See 40 C.F.R. § 1508.11. It also describes impacts of alternatives as well as plans to mitigate impacts. "Environment" means "the natural and physical environment, and the relationship of people with that environment." 40 C.F.R. § 1508.14. The "environment" considered in an EIS includes land, water, air, structures, living organisms, environmental values at the site, and the social, cultural, and economic aspects. See *id.* "Effect" means a change in consequence that results from an activity. 40 C.F.R. § 1508.8. Impacts can be positive, negative, or both. See *id.* An EIS describes impacts, as well as ways to mitigate impacts. "Mitigate" means "to lessen or remove negative impacts." 40 C.F.R. § 1508.20.

⁶⁹ An EA is a concise public document, for which a Federal agency is responsible, that briefly provides sufficient evidence and analysis for determining whether there is a need to prepare an EIS or a Finding of No Significant Impact. It also aids in an agency's compliance with the Act when no EIS is necessary and facilitates preparation of a statement when one is necessary. An EA shall include brief discussions of the need for the proposal, of alternatives as required by 42 U.S.C. § 4332 (2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted. See 40 C.F.R. § 1508.9.

species into containment facilities or interstate movement between containment facilities are excluded from NEPA regulations.

12.F.1.p National Invasive Species Act, 16 U.S.C. § 4701 et seq.

The National Invasive Species Act (NISA) reauthorized and amended the Non-Indigenous Aquatic Nuisance Prevention and Control Act (NANPCA). The focus of NISA is on the spread of aquatic nuisance species through ballast water releases. NISA created a national Task Force co-chaired by the Director of the U.S. Fish and Wildlife Service and the Undersecretary of Commerce for Oceans and Atmosphere.⁷⁰ This Task Force was charged with developing and implementing a program to prevent the unintentional introduction and dispersal of aquatic nuisance species⁷¹ through ballast water management.⁷²

NISA requires the development of voluntary national guidelines to prevent the introduction and spread of nonindigenous species into U.S. waters via ballast water of commercial vessels.⁷³ The guidelines apply to vessels equipped with ballast water tanks and directs vessels that enter U.S. waters after operating beyond the EEZ to undertake ballast exchange in the seas.⁷⁴ The Secretary⁷⁵ is also required to establish record keeping and reporting procedures and sampling techniques, based on the best available science, to monitor compliance.⁷⁶ However, a vessel is not required to conduct ballast water exchange if the exchange would threaten the safety or stability of the vessel, its crew, or its passengers.⁷⁷

Furthermore, the Secretary and Task Force are required to conduct ecological and ballast discharge studies and surveys in waters highly susceptible to invasion or requiring further study.⁷⁸ The purpose of conducting these surveys is to examine invasions and the effectiveness of ballast management and its guidelines.⁷⁹

States, through their respective Governors, may submit their own comprehensive management plans to the Task Force for approval.⁸⁰ These management plans identify areas or activities within each State or the surrounding region, except for those related to public facilities, for technical, enforcement, or financial assistance (or any combination thereof) to reduce or eliminate the risks associated with aquatic nuisance species.⁸¹

NISA promotes research on species that fall under the definition "aquatic nuisance species" through competitive research grants, educational programs, and technical assistance to State and local governments and persons.⁸² Such research may include the environmental and economic risks associated with the introduction of such species, the pathways by which such species are introduced and dispersed, possible methods for prevention, monitoring, and control, and assessment of the effectiveness of such methods.⁸³

⁷⁰ See 16 U.S.C. § 4721(a).

⁷¹ Under NISA, "aquatic nuisance species" means "a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters." *Id.* § 4702(1). "Nonindigenous species" means "any species or other viable biological material that enters an ecosystem beyond its historic range, including any such organism transferred from one country to another." *Id.* § 4702(11).

⁷² See *id.* § 4722(a).

⁷³ See *id.* § 4711.

⁷⁴ See *id.*

⁷⁵ Under the NISA, "Secretary" means the Secretary of the Department in which the U.S. Coast Guard is operating. See 16 U.S.C. § 4702(12).

⁷⁶ 16 U.S.C. § 4711(2)(F)(i), (G), and (I).

⁷⁷ See *id.* § 4711(c)(2).

⁷⁸ 16 U.S.C. § 4712(a).

⁷⁹ See *id.*

⁸⁰ See *id.* § 4724.

⁸¹ See *id.*

⁸² See *id.* § 4722(f).

⁸³ See *id.*

12.F.1.q National Marine Sanctuary Act, 16 U.S.C. § 1431 et seq.

The National Marine Sanctuary Act (NMSA) established the National Marine Sanctuary System, the purpose of which is to "improve the conservation, understanding, management, and wise and sustainable use of marine resources; enhance public awareness, understanding, and appreciation of the marine environment; and maintain for future generations the habitat and ecological services of the natural assemblage of living resources that inhabit these areas."⁸⁴

Some of the major goals of the NMSA include research, monitoring, and education.⁸⁵ The DOC is to coordinate and promote the use of sanctuaries for such purposes. In addition, the DOC may issue special use permits for specific activities, if necessary, to "establish conditions of access and use of any sanctuary resources or to promote public use and understanding of a sanctuary resource."⁸⁶ The DOC may enter into cooperative agreements, contracts, or other agreements with States, local governments, regional agencies, interstate agencies, or other persons in order to carry out the purposes and policies of the NMSA.⁸⁷

Grant and contract funds are available for research, monitoring, and education for conservation and management purposes.⁸⁸ Such purposes could include control and management of any invasive species that is or may be in the future in a particular Sanctuary.

Under the NMSA, it is unlawful for any person to "destroy, cause the loss, or injure any sanctuary resource managed under law or regulations for the sanctuary."⁸⁹ Therefore, regulations for particular Sanctuaries could prohibit the introduction of invasive species into the Sanctuaries. For example, the Florida Keys National Marine Sanctuary's management plan explicitly prohibits the introduction of invasive species into the Sanctuary.⁹⁰

12.F.1.r Plant Protection Act, 7 U.S.C. § 7701 et seq.

The underlying policy of the Plant Protection Act (PPA) is to prevent the introduction or dissemination of plant pests⁹¹ into the United States.⁹² With certain exceptions, no person is authorized to import, enter, export, or move in interstate commerce any plant pest, unless such importation, entry, exportation, or movement is authorized under a general or specific permit and is in accordance with USDA regulations.⁹³

As previously noted, there are exceptions to the rule. The USDA may allow the importation, entry, exportation, or movement in interstate commerce of specified plant pests without further restriction if the USDA finds that a permit is not necessary.⁹⁴ Any person may petition the USDA to add or remove a plant pest from the regulations.⁹⁵

The PPA prohibits unauthorized mailing of plant pests.⁹⁶ "Any letter, parcel, box, or other package containing any plant pest, whether sealed as letter-rate postal matter or not, is not mailable and shall not be knowingly conveyed in the mail or delivered from any post office or by any mail carrier unless it is mailed in compliance with regulations to prevent the dissemination of plant pests into the

⁸⁴ 16 U.S.C. § 1431(a)(4).

⁸⁵ *See id.* § 1440.

⁸⁶ *See id.* § 1441(a).

⁸⁷ *See id.* § 1442(a).

⁸⁸ *See id.* § 1440(b)(1).

⁸⁹ *Id.* § 1436(1).

⁹⁰ *See* National Agricultural Library for the National Invasive Species Council, National Management Plan: Appendix 3 - Legal Authorities Related to Invasive Species. Retrieved 25 July 2003 from <http://www.invasivespecies.gov/council/appendix3.shtml>.

⁹¹ *See* 7 U.S.C. § 403(14) for a definition of "plant pest."

⁹² *See id.* § 411(a).

⁹³ *See id.*

⁹⁴ *See id.* § 411(c).

⁹⁵ *See id.*

⁹⁶ *See id.* § 411(d).

United States or interstate."⁹⁷ Moreover, no person is authorized to open any mailed letter or other mailed sealed matter except in accordance with the postal laws and regulations.⁹⁸

The movement of plants, plant products, biological control organisms, noxious weeds, articles, and means of conveyance are also regulated.⁹⁹ The USDA may prohibit or restrict the importation, entry, exportation, or movement of the aforementioned in interstate commerce if it determines that prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination of a plant pest or noxious weed within the United States.¹⁰⁰ The USDA may publish, by regulation, a list of noxious weeds that are prohibited or restricted in interstate commerce.¹⁰¹ Likewise, the USDA may publish, by regulation, a list of organisms that are not prohibited or restricted in interstate commerce.¹⁰² However, lists may take into account distinctions between organisms such as "indigenous," "invasive," "newly introduced," or "commercially raised."¹⁰³

The PPA includes notification and holding requirements upon arrival. The Department of the Treasury (the Treasury) is required to promptly notify the USDA of the arrival of any plant, plant product, biological control organism, plant pest, or noxious weed at a port of entry.¹⁰⁴ Then the Treasury is required to hold the plant, plant product, biological control organism, plant pest, or noxious weed until it has been inspected and authorized for entry into or transit movement through the United States or is otherwise released by the USDA.¹⁰⁵ However, these requirements do not apply to any plant, plant product, biological control organism, plant pest, or noxious weed that is imported from a country or region of a country designated as exempt by the USDA.¹⁰⁶

Parties who are responsible for any such plants, biological organisms or means of conveyance have certain duties under the PPA. Parties are required to have a permit under Sections 411 or 412 and shall notify the USDA "as soon as possible" after the arrival of the plant, biological organism, or the means of conveyance at the port of entry and before it is moved from the port of entry.¹⁰⁷ No person is to move from a port of entry or interstate any plant, biological organism, or means of conveyance unless it is inspected and authorized for entry into or transit movement through the United States or otherwise released by the USDA.¹⁰⁸

The PPA authorizes the USDA to hold, treat, or destroy items if necessary to prevent dissemination of a plant pest or noxious weed that is "new or not known to be widely prevalent or distributed within and throughout the United States."¹⁰⁹ Likewise, the USDA may order the owner of any plant, biological organism, or means of conveyance subject to action under Section 414(a), or the owner's agent, to treat, apply other remedial measures to, destroy, or otherwise dispose of it without cost to the Federal government.¹¹⁰

The PPA encourages cooperation between the USDA and other Federal agencies or entities, States or political subdivisions of States, national governments, local governments of other nations, domestic or international organizations, domestic or international associations, and other persons to carry out this law.¹¹¹

⁹⁷ *Id.*

⁹⁸ *See id.*

⁹⁹ *See id.* § 412.

¹⁰⁰ *See id.*

¹⁰¹ *See id.* §12(f)(1).

¹⁰² *See id.*

¹⁰³ *See id.* § 412(g).

¹⁰⁴ *See id.* § 413.

¹⁰⁵ *See id.*

¹⁰⁶ *See id.*

¹⁰⁷ *See id.* § 413(b).

¹⁰⁸ *See id.*

¹⁰⁹ *Id.* § 414(a).

¹¹⁰ *See id.*

¹¹¹ *See id.* § 431.

12.F.1.s Virus-Serum-Toxin Act, 21 U.S.C. § 151 et seq.

Persons, firms, and corporations are not authorized to deal in any worthless, contaminated, dangerous, or harmful biological product¹¹² for use in the treatment of domestic animals unless prepared under and in compliance with regulations prescribed by the USDA at an establishment licensed by the USDA.¹¹³ Also, USDA regulates the importation and exportation of any biological product for use in the treatment of domestic animals without a permit from the USDA or, in the case of an article originating from Canada, a permit or certification by Canada.¹¹⁴

12.F.2 Federal Programs

12.F.2.a Conservation Technical Assistance

The USDA Natural Resources Conservation Service (NRCS) administers Conservation Technical Assistance (CTA). CTA is a voluntary program for landowners, communities, State and local governments, and other Federal agencies for assistance in "planning and implementing natural resource solutions to reduce soil erosion, improve soil and water quantity and quality, improve and conserve wetlands, enhance fish and wildlife habitat ... and improve woodlands."¹¹⁵ The CTA program also provides assistance for implementation of programs authorized by the 1996 Farm Bill, such as Highly Erodible Land and wetlands conservation provisions.¹¹⁶ The CTA program can be utilized for management of invasive species. The NRCS can provide technical assistance in preventing invasions and controlling, managing, and eradication of invasive species. (For more information on this program, visit <http://www.nrcs.usda.gov/programs/cta/index.html>.)

12.F.2.b Environmental Quality Incentives Program

The Environmental Quality Incentives Program (EQIP), administered by the NRCS, was reauthorized in the Farm Security and Rural Investment Act of 2002 (Farm Bill 2002). Both governmental organizations and private landowners that engage in agricultural and livestock production to control and manage invasive species can utilize the EQIP.¹¹⁷ Participation in the EQIP is voluntary.¹¹⁸ EQIP activities are implemented according to the operation plans developed by both the government and producer.¹¹⁹ The program provides financial assistance, through incentive payments and cost-shares, to protect against threats to soil, water, and other natural resources.¹²⁰ Specifically, the EQIP can provide technical assistance for preventing invasions and the use of cropping systems that discourage the introduction and spread of invasive species.¹²¹ The program also can provide technical, educational, and financial assistance to eradicate/control invasive species and to manage lands to prevent future invasions.¹²² Finally, the NRCS also can provide assistance for planning and installation measures, such as structural and land management practices, to protect land from future invasions after eradication.¹²³ (For more information on this program, visit <http://www.nrcs.usda.gov/programs/eqip/>.)

12.F.2.c Plant Materials Program

The Plant Materials Program, administered by the NRCS, provides plant recommendations and technology for the Farm Bill 2002 programs, such as EQIP, Wetlands Reserve Program, and the Wildlife Habitat Incentives Program. Plant Materials Centers assemble, test, and release plant species for commercial production and use of plant materials for natural resource conservation and

¹¹² The term "biological product" includes, but is not limited to, "vaccines, bacterins, allergens, antibodies, antitoxins, toxoids, immunostimulants, certain cytokines, antigenic or immunizing components of live organisms, and diagnostic components, that are of natural or synthetic origin or that are derived from synthesizing or altering various substances or components of substances ..." 9 C.F.R. § 101.2.

¹¹³ See 21 U.S.C. § 151.

¹¹⁴ See *id.* § 152.

¹¹⁵ 7 C.F.R. § 601.1(f)(1)(i).

¹¹⁶ See *id.*

¹¹⁷ See 7 C.F.R. § 1466.4(d).

¹¹⁸ See *id.* § 1466.4(a).

¹¹⁹ See *id.* See also 7 C.F.R. § 1466.6(a).

¹²⁰ See *id.*

¹²¹ See *id.* § 1466.8(a).

¹²² See *id.* § 1466.1.

¹²³ See *id.*

development, including but not limited to soil erosion on all lands, protection of upstream watersheds, and improvement of wildlife food and cover.¹²⁴ Plant Materials Centers work in cooperation with other agencies in the USDA and with other Federal and State research agencies to achieve these goals.¹²⁵ Plant materials are produced in the quantity required to do a specific conservation job that will serve the public and only if the plant materials are not commercially available.¹²⁶ Currently, there are 23 Plant Materials Centers in the United States, not including the National Plant Materials Center in Beltsville, Maryland.¹²⁷ (For more information on this program, visit <http://plant-materials.nrcs.usda.gov/>.)

12.F.2.d Wetlands Reserve Program

Farm Bill 2002 reauthorized the Wetlands Reserve Program (WRP), which is a voluntary program administered by the NRCS. The purpose of the WRP is to "offer landowners the opportunity to protect, restore, and enhance wetlands on their property" in the long term.¹²⁸ The WRP provides financial, technical, and educational assistance to landowners through a Wetlands Reserve Plan of Operations in order to maintain healthy wetlands and to manage the hydrological conditions of the soil, native vegetation, and natural topography of eligible lands.¹²⁹ The USDA may provide cost-share assistance to landowners, as well as assistance with planning and installing features to restore wetland habitat, which could include wetlands altered by invasive species.¹³⁰ (For more information on this program, visit <http://www.nrcs.usda.gov/programs/wrp/>.)

12.F.2.e Wildlife Habitat Incentives Program

Farm Bill 2002 reauthorized the Wildlife Habitat Incentives Program (WHIP), a voluntary program administered by the NRCS. The purpose of WHIP is to "help participants develop habitat for upland wildlife, wetland wildlife, threatened and endangered species, fish, and other types of wildlife."¹³¹ Protection of wildlife would include protections against the threats to wildlife posed by invasive species, as well as the lands that they inhabit. WHIP provides financial and technical assistance to landowners who develop wildlife habitat through a Wildlife Habitat Development Plan (WHDP).¹³² Financial assistance is through cost-share payments and agreements.¹³³ Technical assistance includes application, assessment, monitoring, enforcement, and other actions necessary to fulfill the goals of the WHIP and the WHDP.¹³⁴ (For more information on this program, visit <http://www.nrcs.usda.gov/programs/whip/>.)

¹²⁴ See 7 C.F.R. §§ 613.1, 613.2.

¹²⁵ See *id.* § 613.2.

¹²⁶ See *id.* § 613.4.

¹²⁷ See *id.* § 613.5.

¹²⁸ See The USDA Natural Resources Conservation Service, Wetlands Reserve Program. Retrieved 28 February 2003 from www.nrcs.usda.gov/programs/wrp/.

¹²⁹ See 7 C.F.R. § 1467.4(a).

¹³⁰ See *id.*

¹³¹ 7 C.F.R. § 636.1(a).

¹³² See *id.* § 636.7.

¹³³ See *id.* §§ 636.8, 636.10.

¹³⁴ See *id.* § 636.4.

12.F.3 Citations to the Code of Federal Regulations

Clean Water Act

- 7 CFR § 601
- 9 CFR § 590
- 40 CFR § 6, 25, 35, 122, 123, 130, 401

Coastal Zone Management Act

- 49 CFR § 1105

Cooperative Forestry Assistance Act

- 36 CFR § 200, 230

Endangered Species Act

- 7 CFR § 319, 355, 356, 371, 650
- 15 CFR § 904, 922
- 19 CFR § 12, 10
- 21 CFR § 25
- 30 CFR § 773
- 32 CFR § 190
- 36 CFR § 2, 13
- 43 CFR § 414, 8340
- 49 CFR § 1105
- 50 CFR § 10, 14, 17, 23, 81, 222, 402, 424, 453

Federal Agricultural Improvement and Reform Act

- 7 CFR § 12, 1794

Federal Insecticide, Fungicide, and Rodenticide Act

- 7 CFR § 110, 301, 319, 760
- 9 CFR § 71, 85, 121
- 14 CFR § 137
- 19 CFR § 12
- 21 CFR § 211
- 40 CFR § 2, 17, 22, 23, 35, 40, 129, 152, 154, 158, 159, 160, 163, 164, 166, 167, 170-173

Federal Noxious Weed Act

- 7 CFR § 340, 371
- 50 CFR § 24

Federal Plant Pest Act

- 7 CFR § 351
- 50 CFR § 24

Federal Seed Act

- 7 CFR § 97, 201, 371

Fish and Wildlife Coordination Act

- 30 CFR § 773, 736
- 40 CFR § 122
- 43 CFR § 8, 24
- 50 CFR § 10005

Food Security Act

- 7 CFR § 400, 614, 1940
- 9 CFR § 205
- 46 CFR § 381
- 9 CFR § 205
- 46 CFR § 381

The Lacey Act

- 50 CFR § 10, 11, 12, 13, 14, 16

The Lacey Act Amendments of 1981

- 7 CFR § 356, 371
- 15 CFR § 904
- 50 CFR § 10, 11, 12, 14, 300

Magnuson-Stevens Fishery Management and Conservation Act

- 15 CFR § 904, 905
- 50 CFR § 229, 300, 600, 622, 640, 648

Multiple-Use Sustained-Yield Act

- 36 CFR § 200, 219

National Environmental Policy Act

- 7 CFR § 372, 520, 622, 624, 632, 650, 799, 1710, 1780, 1794, 3407
- 10 CFR § 51, 1021
- 12 CFR § 408, 1815
- 14 CFR § 1216
- 16 CFR § 1, 1021
- 18 CFR § 2, 380, 707, 725
- 21 CFR § 25
- 22 CFR § 161
- 23 CFR § 751, 771
- 24 CFR § 50
- 28 CFR § 61
- 29 CFR § 11
- 32 CFR § 775
- 33 CFR § 230
- 36 CFR § 805, 907, 1010
- 38 CFR § 26
- 39 CFR § 775
- 40 CFR § 6, 1500, 1501- 1508, 1515
- 43 CFR § 1601, 1610, 3160, 3400, 3430
- 44 CFR § 9, 10
- 46 CFR § 504
- 49 CFR § 80, 260, 520, 622, 1105
- 50 CFR § 402, 530

National Forest Management Act

- 36 CFR § 200, 215, 219

National Invasive Species Act

- 33 CFR § 151

National Marine Sanctuary Act

- 15 CFR § 904, 922

Plant Protection Act

- 7 CFR § 301, 318, 319, 330, 340, 351, 352, 355, 360, 371

Soil Conservation and Domestic Allotment Act

- 7 CFR § 7, 601, 701

Virus-Serum-Toxin Act

- 9 CFR § 101, 102, 105, 114, 115, 116, 121, 123
- 32 CFR § 627

12.G Appendix G. Section 1204 of the National Invasive Species Act of 1996

SECTION 1204. STATE AQUATIC NUISANCE SPECIES MANAGEMENT PLANS

(a) STATE OR INTERSTATE INVASIVE SPECIES MANAGEMENT PLANS —

- (1) IN GENERAL – After providing notice and opportunity for public comment, the governor of each State may prepare and submit, or the Governors of the States and the governments of Indian Tribes involved in an interstate organization, may jointly prepare and submit —
 - (A) a comprehensive management plan to the Task Force for approval which identifies those areas or activities within the State or within the interstate region involved, other than those related to public facilities, for which technical, enforcement, or financial assistance (or any combination thereof) is needed to eliminate or reduce the environmental, public health, and safety risk associated with aquatic nuisance species, particularly the zebra mussel; and
 - (B) a public facility management plan to the Assistant Secretary for approval which is limited solely to identifying those public facilities within the State or within the interstate region involved for which technical and financial assistance is needed to reduce infestations of zebra mussels.
- (2) CONTENT – Each plan shall, to the extent possible, identify the management practices and measures that will be undertaken to reduce infestations of aquatic nuisance species. Each plan shall —
 - (A) identify and describe State and local programs for environmentally sound prevention and control of the target aquatic nuisance species;
 - (B) identify Federal activities that may be needed for environmentally sound prevention and control of aquatic nuisance species and a description of the manner in which those activities should be coordinated with State and local government activities;
 - (C) identify any authority that the State (or any State or Indian Tribe involved in the interstate organization) does not have at the time of the development of the plan that may be necessary for the State (or any State or Indian Tribe involved in the interstate organization) to protect public health, property, and the environment from harm by aquatic nuisance species; and
 - (D) a schedule of implementing the plan, including a schedule of annual objectives and enabling legislation.
- (3) CONSULTATION —
 - (A) In developing and implementing a management plan, the State or interstate organization should, to the maximum extent practicable, involve local governments and regional entities, Indian Tribes, and public and private organizations that have expertise in the control of aquatic nuisance species.
 - (B) Upon the request of a State or the appropriate official of an interstate organization, the Task Force or the Assistant Secretary, as appropriate under paragraph (1), may provide technical assistance in developing and implementing a management plan.
- (4) PLAN APPROVAL — Within 90 days after the submission of a management plan, the Task Force or the Assistant Secretary in consultation with the Task Force, as appropriate under paragraph (1), shall review the proposed plan and approve it if it meets the requirements of this subsection or return the plan to the Governor or the interstate organization with recommended modifications.

(b) GRANT PROGRAM —

- (1) STATE GRANTS — The Director may, at the recommendation of the Task Force, make grants to States with management plans approved under subsection (a) for the implementation of those plans.
- (2) APPLICATION — An application for a grant under this subsection shall include an identification and description of the best management practices and measures which the State proposes to utilize in implementing an approved management plan with any Federal assistance to be provided under the grant.
- (3) FEDERAL SHARE —
 - (A) The Federal share of the cost of each comprehensive management plan implemented with Federal assistance under this section in any fiscal year shall not exceed 75 percent of the cost incurred by the State in implementing such management program and the non-Federal share of such costs shall be provided from non-Federal sources.
 - (B) The Federal share of the cost of each public facility management plan implemented with Federal assistance under this section in any fiscal year shall not exceed 50 percent of the cost incurred by the State in implementing such management programs and the non-Federal share of such costs shall be provided from non-Federal sources.
- (4) ADMINISTRATIVE COSTS — For the purposes of this section, administrative costs for activities and programs carried out with a grant in any fiscal year shall not exceed 5 percent of the amount of the grant in that year.
- (5) IN-KIND CONTRIBUTIONS — In addition to cash outlays and payments, in-kind contributions of property or personnel services by non-Federal interests for activities under this section may be used for the non-Federal share of the cost of those activities.

(c) ENFORCEMENT ASSISTANCE — Upon request of a State or Indian Tribe, the Director or Under Secretary, to the extent allowable by law and in a manner consistent with section 141 of title 14, United States Code, may provide assistance to a State or Indian Tribe in enforcing an approved State or interstate invasive species management plan.

12.H Appendix H. Executive Order 13112 of February 3, 1999

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended (16 U.S.C. 4701 *et seq.*), Lacey Act, as amended (18 U.S.C. 42), Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*), Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801 *et seq.*), Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and other pertinent statutes, to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause, it is ordered as follows:

Section 1. Definitions.

- (a) "Alien species" means, with respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem.
- (b) "Control" means, as appropriate, eradicating, suppressing, reducing, or managing invasive species populations, preventing spread of invasive species from areas where they are present, and taking steps such as restoration of native species and habitats to reduce the effects of invasive species and to prevent further invasions.
- (c) "Ecosystem" means the complex of a community of organisms and its environment.
- (d) "Federal agency" means an executive department or agency, but does not include independent establishments as defined by 5 U.S.C. 104.
- (e) "Introduction" means the intentional or unintentional escape, release, dissemination, or placement of a species into an ecosystem as a result of human activity.
- (f) "Invasive species" means an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.
- (g) "Native species" means, with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.
- (h) "Species" means a group of organisms all of which have a high degree of physical and genetic similarity, generally interbreed only among themselves, and show persistent differences from members of allied groups of organisms.
- (i) "Stakeholders" means, but is not limited to, State, tribal, and local government agencies, academic institutions, the scientific community, nongovernmental entities including environmental, agricultural, and conservation organizations, trade groups, commercial interests, and private landowners.
- (j) "United States" means the 50 States, the District of Columbia, Puerto Rico, Guam, and all possessions, territories, and the territorial sea of the United States.

Section 2. Federal Agency Duties.

- (a) Each Federal agency whose actions may affect the status of invasive species shall, to the extent practicable and permitted by law;
 - (1) identify such actions;
 - (2) subject to the availability of appropriations, and within Administration budgetary limits, use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and

environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them; and

- (3) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.
- (b) Federal agencies shall pursue the duties set forth in this section in consultation with the Invasive Species Council, consistent with the Invasive Species Management Plan and in cooperation with stakeholders, as appropriate, and, as approved by the Department of State, when Federal agencies are working with international organizations and foreign nations.

Section 3. Invasive Species Council.

- (a) An Invasive Species Council (Council) is hereby established whose members shall include the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Transportation, and the Administrator of the Environmental Protection Agency. The Council shall be co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The Council may invite additional Federal agency representatives to be members, including representatives from subcabinet bureaus or offices with significant responsibilities concerning invasive species, and may prescribe special procedures for their participation. The Secretary of the Interior shall, with concurrence of the Co-Chairs, appoint an Executive Director of the Council and shall provide the staff and administrative support for the Council.
- (b) The Secretary of the Interior shall establish an advisory committee under the Federal Advisory Committee Act, 5 U.S.C. App., to provide information and advice for consideration by the Council, and shall, after consultation with other members of the Council, appoint members of the advisory committee representing stakeholders. Among other things, the advisory committee shall recommend plans and actions at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order. The advisory committee shall act in cooperation with stakeholders and existing organizations addressing invasive species. The Department of the Interior shall provide the administrative and financial support for the advisory committee.

Section 4. Duties of the Invasive Species Council.

The Invasive Species Council shall provide national leadership regarding invasive species, and shall:

- (a) oversee the implementation of this order and see that the Federal agency activities concerning invasive species are coordinated, complementary, cost-efficient, and effective, relying to the extent feasible and appropriate on existing organizations addressing invasive species, such as the Aquatic Nuisance Species Task Force, the Federal Interagency Committee for the Management of Noxious and Exotic Weeds, and the Committee on Environment and Natural Resources;
- (b) encourage planning and action at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order, in cooperation with stakeholders and existing organizations addressing invasive species;
- (c) develop recommendations for international cooperation in addressing invasive species;

- (d) develop, in consultation with the Council on Environmental Quality, guidance to Federal agencies pursuant to the National Environmental Policy Act on prevention and control of invasive species, including the procurement, use, and maintenance of native species as they affect invasive species;
- (e) facilitate development of a coordinated network among Federal agencies to document, evaluate, and monitor impacts from invasive species on the economy, the environment, and human health;
- (f) facilitate establishment of a coordinated, up-to-date information-sharing system that utilizes, to the greatest extent practicable, the Internet; this system shall facilitate access to and exchange of information concerning invasive species, including, but not limited to, information on distribution and abundance of invasive species; life histories of such species and invasive characteristics; economic, environmental, and human health impacts; management techniques, and laws and programs for management, research, and public education; and
- (g) prepare and issue a national Invasive Species Management Plan as set forth in section 5 of this order.

Section. 5. Invasive Species Management Plan.

- (a) Within 18 months after issuance of this order, the Council shall prepare and issue the first edition of a National Invasive Species Management Plan (Management Plan), which shall detail and recommend performance-oriented goals and objectives and specific measures of success for Federal agency efforts concerning invasive species. The Management Plan shall recommend specific objectives and measures for carrying out each of the Federal agency duties established in section 2(a) of this order and shall set forth steps to be taken by the Council to carry out the duties assigned to it under section 4 of this order. The Management Plan shall be developed through a public process and in consultation with Federal agencies and stakeholders.
- (b) The first edition of the Management Plan shall include a review of existing and prospective approaches and authorities for preventing the introduction and spread of invasive species, including those for identifying pathways by which invasive species are introduced and for minimizing the risk of introductions via those pathways, and shall identify research needs and recommend measures to minimize the risk that introductions will occur. Such recommended measures shall provide for a science-based process to evaluate risks associated with introduction and spread of invasive species and a coordinated and systematic risk-based process to identify, monitor, and interdict pathways that may be involved in the introduction of invasive species. If recommended measures are not authorized by current law, the Council shall develop and recommend to the President through its Co-Chairs legislative proposals for necessary changes in authority.
- (c) The Council shall update the Management Plan biennially and shall concurrently evaluate and report on success in achieving the goals and objectives set forth in the Management Plan. The Management Plan shall identify the personnel, other resources, and additional levels of coordination needed to achieve the Management Plan's identified goals and objectives, and the Council shall provide each edition of the Management Plan and each report on it to the Office of Management and Budget. Within 18 months after measures have been recommended by the Council in any edition of the Management Plan, each Federal agency whose action is required to implement such measures shall either take the action recommended or shall provide the Council with an explanation of why the action is not feasible. The Council shall assess the effectiveness of this order no less than once each 5 years after the order is issued and shall report to the Office of Management and Budget on whether the order should be revised.

Section. 6. Judicial Review and Administration.

- (a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person.
- (b) Executive Order 11987 of May 24, 1977, is hereby revoked.

- (c) The requirements of this order do not affect the obligations of Federal agencies under 16 U.S.C. 4713 with respect to ballast water programs.
- (d) The requirements of section 2(a)(3) of this order shall not apply to any action of the Department of State or Department of Defense if the Secretary of State or the Secretary of Defense finds that exemption from such requirements is necessary for foreign policy or national security reasons.

WILLIAM J. CLINTON
THE WHITE HOUSE
February 3, 1999

12.I Appendix I. Summary of International Laws and Treaties Relevant to Aquatic Invasive Species

12.I.1 International Laws

12.I.1.a Codex Alimentarius Commission

The United Nations' Food and Agricultural Organization (FAO) and the World Health Organization (WHO) created the Codex Alimentarius Commission (Codex) in 1962.¹ The purpose of the Codex is to encourage fair international trade in food while promoting the health and economic interests of consumers.² In the United States, Codex activities are coordinated by the USDA, EPA, and Food and Drug Administration.³

Volume 1A of the Codex empowers the Commission to create specialized committees. One such committee that relates to invasive species is the Committee on Import/Export Inspection and Certification Systems.⁴ To fulfill its goal of protecting consumer health in the area of food safety, The Codex has formulated standards for specific food commodities, pesticide and drug residues, food contaminants and additives, labeling, and food safety.⁵ Invasive species are relevant to the Codex if they threaten food safety or the international food trade.

12.I.1.b Convention on Biological Diversity

The Convention on Biological Diversity (CBD) recognizes the importance of "ecological, genetic, social, economic, scientific, educational, cultural, recreational, and aesthetic" values of biological diversity throughout the world.⁶ Countries have rights over their own biological resources, but also have the responsibility of conserving them and using them in a sustainable manner.⁷ A fundamental requirement for the conservation of biological diversity is In-Situ conservation.⁸ The CBD recognizes the need to "prevent the introduction of and control or eradicate those alien species which threaten ecosystems, habitats, or species."⁹ The CBD has a program to target introduction of invasive species.¹⁰ The Global Invasive Species Programme works with the CBD to provide expertise through the CBD's Subsidiary Body on Science, Technology, and Technical Assistance.¹¹ The United States has not ratified the agreement.

12.I.1.c Convention on International Trade in Endangered Species of Wild Flora and Fauna

The purpose of The Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) is to foster international cooperation in order to protect certain species of flora and fauna from over-exploitation through international trade.¹² CITES divides species of wild flora and fauna into three appendices. Trade of any species in Appendices I, II, or III is prohibited, except in accordance with provisions set forth in CITES.¹³ Trade of species included in Appendices I, II, and III are regulated through a system of import, export, and re-export permits.¹⁴

¹ See Food Safety and Inspection Service U.S. Codex Office, Codex Alimentarius Commission. Retrieved 17 February 2003 from www.fsis.usda.gov/OA/codex/.

² See *id.*

³ See *id.*

⁴ See FAO/WHO Food Standards, Codex Alimentarius. Retrieved 17 February 2003 from www.codexalimentarius.net/.

⁵ See *id.*

⁶ Convention on Biological Diversity, June 5, 1992, Preamble.

⁷ See *id.*

⁸ In-Situ conservation means "the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties." *Id.* Article 2.

⁹ *Id.* Article 2(h).

¹⁰ See Convention on Biological Diversity, Alien Species Introduction. Retrieved 17 February 2003 from www.biodiv.org/programmes/cross-cutting/alien/.

¹¹ See Convention on Biological Diversity, Alien Species Introduction. Retrieved 17 February 2003 from www.biodiv.org/programmes/cross-cutting/alien/gisp.asp.

¹² See Convention on International Trade of Endangered Species of Wild Flora and Fauna, March 3, 1973, Preamble.

¹³ See *id.* Article II.4.

¹⁴ See *id.* Article III.2, III.3, and III.4. See also Article IV.2, IV.3, IV.4, and IV.5 and Article V.2, V.3, and V.4.

Appendix I includes species threatened with extinction that are or may be affected by trade. Trading members of these species are the most strictly regulated in order not to further endanger their survival.¹⁵ For these species, trade is authorized in only “exceptional” circumstances.¹⁶

Appendix II includes species that currently are not threatened with extinction, but would become so threatened without strict regulation.¹⁷ Appendix II also recognizes that trade in other species also must be regulated in order to effectively protect species included in Appendix II.¹⁸

Appendix III includes all species that any Party to CITES declares to be subject to regulation within its jurisdiction to prevent or restrict exploitation, and “as needing cooperation of other parties in the control of trade.”¹⁹

12.I.1.d Office of International Epizootics

The Office of International Epizootics (OIE) is an international organization created by agreement in 1924. Its purposes are to guarantee the transparency of animal diseases worldwide; to collect, analyze, and disseminate veterinary scientific information; to provide expertise and promote international solidarity for the control of animal diseases; and to guarantee the sanitary safety of world trade by developing sanitary rules for international trade in animals and animal products.²⁰

The OIE collects and disseminates information through cooperation between Member Countries. Each Member reports to the OIE animal diseases that it identifies within its territory.²¹ The OIE thereby disseminates this information to other Members so that each may act upon this information accordingly.²² The OIE provides technical support to Member Countries that request assistance in controlling and eradicating animal diseases.²³ The OIE also creates “normative documents relating to rules that Member Countries can use to protect themselves from diseases without setting unjustified sanitary barriers.”²⁴ Such normative documents include the International Animal Health Code²⁵ and Manual Standards for Diagnostic Tests and Vaccines.²⁶ While the OIE generally focuses on issues such as livestock diseases and developing standards for diagnostic tests and vaccines, it recently has started to focus on diseases affecting wildlife, including aquatic species, by publishing its International Aquatic Animal Health Code.²⁷

12.I.1.e International Plant Protection Convention

The purpose of the International Plant Protection Convention (IPPC) is to prevent the introduction and spread of pests of plants and plant products and to promote appropriate control measures.²⁸ The IPPC was adopted in 1951 and was revised in November 1997. However, the 1997 revision, while adopted, is not yet in force.²⁹ Under the IPPC, each contracting party agrees to cooperate with each other to prevent the introduction of plant pests and diseases and prevent their spread across national boundaries.³⁰ The Food and Agriculture Organization of the United Nations

¹⁵ See *id.* Article II.1.

¹⁶ *Id.*

¹⁷ See *id.* Article II.2(a).

¹⁸ See *id.* Article II.2(b).

¹⁹ See *id.* Article II.3.

²⁰ See Office of International Epizootics, What is the OIE?. Retrieved 17 February 2003 from www.oie.int/eng/OIE/en_oie.htm.

²¹ See *id.*

²² See *id.*

²³ See *id.*

²⁴ See *id.*

²⁵ See Office of International Epizootics, Terrestrial Animal Health Code 2003. Retrieved 25 July 2003 from www.oie.int/eng/normes/mcode/A_summry.htm.

²⁶ See Office of International Epizootics, Manual Standards for Diagnostic Tests and Vaccines 2000. Retrieved 28 February 2003 from www.oie.int/eng/normes/mmanual/A_summry.htm.

²⁷ See Office of International Epizootics, International Aquatic Animal Health Code 2002. Retrieved 28 February 2003 from www.oie.int/eng/normes/fcode/A_summry.htm.

²⁸ See International Plant Protection Convention, December 6, 1951, current text adopted in 1979, Article I.1.

²⁹ See International Phytosanitary Portal, Documents and Publications. Retrieved 3 March 2003 from www.ippc.int/cds_ippc_prod/IPP/En/publications.htm.

³⁰ See International Plant Protection Convention, December 5, 1951, current text adopted in 1979, Preamble.

disseminates information on import restrictions, requirements, prohibitions, and regulations to all contracting parties and regional plant protection organizations.³¹

Each contracting party is responsible for creating a national plant organization to carry out the provisions of the IPPC, such as inspection of consignments of plants and plant products moving in international traffic that may carry pests and diseases and protecting endangered areas.³² If necessary for phytosanitary conditions, contracting parties may regulate the entry of plants into their territories by setting requirements of importation; prohibiting importation of specific plants; inspecting and detaining specific plants; and treating, destroying, or refusing entry to specific plants.³³ However, contracting parties shall not take measure more stringent than necessary to accomplish the goals of the IPPC in order to minimize interference with international trade.³⁴

12.I.1.f North American Free Trade Agreement

The main objectives of the North American Free Trade Agreement (NAFTA) are to eliminate trade barriers and to promote fair competition between the Parties to the Agreement.³⁵ NAFTA requires that each Party to the greatest extent practicable, participate in international and North American standardizing organizations, such as the Codex, OIE, IPPC, and North American Plant Protection Organization, to promote the "development and periodic review of international standards, guidelines and recommendations."³⁶

Chapter 7 relates to invasive species. It allows each Party to adopt sanitary or phytosanitary measures necessary for the protection of human, animal, or plant life or health in its territory.³⁷ Such measures may be more stringent than international standards, guidelines, or recommendations.³⁸ Such measures should be based on research and risk assessment.³⁹ However, measures should not arbitrarily or unjustifiably discriminate against another Party's goods.⁴⁰ Furthermore, in conducting risk assessments in order to determine appropriate measures of protection, one of the factors that the Parties must take into account is "the prevalence of relevant diseases or pests, including the existence of pest-free or disease-free areas or areas of low pest or disease prevalence."⁴¹

12.I.1.g World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures

The Sanitary and Phytosanitary Measures Agreement (SPS Agreement) is a supplement to the World Trade Organization Agreement. It encourages Members to adopt measures necessary to protect human, animal or plant life or health.⁴² However, such measures should not arbitrarily or unjustifiably discriminate against Members that experience the same conditions in their territories or be disguised as a restriction on international trade.⁴³ The SPS Agreement also encourages Members to use other international guidelines, such as the Codex, OIE, and IPPC⁴⁴ to promote within these organizations the development and periodic review of standards, guidelines, and recommendations with respect to all aspects of sanitary and phytosanitary measures.⁴⁵ The SPS Agreement Members should conduct scientific research and collect evidence in order to set appropriate levels of sanitary and phytosanitary protection with the least impact on international

³¹ See *id.* Article VI.4.

³² See *id.* Article IV.1(a)(i), (ii).

³³ See *id.* Article VI.1.

³⁴ See *id.* Article VI.2.

³⁵ See North American Free Trade Agreement, 17 December 1992, Article 102.

³⁶ *Id.* Chapter 7, § B, Art. 713(5).

³⁷ See *id.* Chapter 7, § B, Art. 712(1).

³⁸ See *id.*

³⁹ See *id.* Chapter 7, § B, Art. 715(1).

⁴⁰ See *id.* Chapter 7, § B, Art. 712(4)

⁴¹ *Id.* Chapter 7, § B, Art.715(1)(e).

⁴² See Agreement on Sanitary and Phytosanitary Measures, 15 April 1994, Preamble.

⁴³ See *id.* Article 5.5.

⁴⁴ See *id.* Preamble. See also Article 3.4.

⁴⁵ See *id.* Article 3.4.

trade.⁴⁶ Such evidence includes the prevalence of specific diseases or pests, existence of pest-free or disease-free areas, relevant ecological and environmental conditions, and quarantine or other treatment.⁴⁷

⁴⁶ See *id.* Article 5.4.
⁴⁷ See *id.* Article 5.2.

12.J Appendix J. Public Comments Received and Responses

The public comment period for the *State Management Plan for Aquatic Invasive Species in Louisiana* began December 21, 2004 and closed on January 21, 2005. No public comments were received.