



To: Tammy Davis, Invasive Species Coordinator, Alaska Department of Fish & Game

From: Stephanie Otts, Director, National Sea Grant Law Center, University of Mississippi School of Law

Re: Model Alaska AIS Law (NSGLC-18-04-05)

Date: November 28, 2018

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### **Advisory Request Summary**

In June 2018, the Alaska Department of Fish & Game (ADF&G) approached the National Sea Grant Law Center to conduct a review of Alaska’s laws with respect to invasive species management authorities and develop a model aquatic invasive species law for Alaska. Alaskans rely on native fish and wildlife as a lifeline. Fish and wildlife enable them to feed their families, remain connected to their cultural heritage, and have robust economies reliant on healthy ecosystems that support sustainable native species. Protecting, maintaining and improving the fish, game and aquatic resources of the state, and the economies that rely on them is the mission of the ADF&G. The department, however, is hampered from averting invasive species entering the state due to a lack of specific legal authorities to take action.

As a first step, the NSGLC, working in collaboration with partners at ADF&G, conducted an analysis of current Alaska laws and regulations to identify existing agency authorities and gaps and concerns that should be addressed for priority vectors. The results of the gap analysis informed the development of the model law.

The attached “Model Alaska AIS Law” was developed to fill identified gaps in the ADF&G’s authority to prevent, monitor for and respond to invasive species and thereby protect Alaska. The ADF&G sought to build upon Alaska H.B. No. 177, an aquatic invasive species bill introduced in the Alaska Legislature in 2018, and other legislative reform discussions occurring within the state. In drafting the Model Alaska AIS Law, the NSGLC drew upon a number of resources in addition to H.B. No. 177 including the NSGLC’s Model Legal Framework for State Watercraft Inspection and Decontamination Programs (Model WID Framework, available at <http://nsglc.olemiss.edu/projects/model-legal-framework/index.html>), the Environmental Law Institute’s *Invasive Species Control: A Comprehensive Model State Law* (May 2004), and laws and regulations from other Western states.



## Alaska Model AIS Law

### I. Legislative Findings

The legislature finds that:

- (a) Invasive species pose an immediate and significant threat to Alaska’s native wildlife populations and biodiversity; land, water, and other natural resources; and fisheries and outdoor recreation economies. Infestations from these species create a heavy financial burden for state and local government budgets. Infestations of invasive species can also result in indirect negative environmental and economic impacts caused by the devastation of native ecosystems.
- (b) Prevention, early detection, rapid response and eradication are the most effective and least costly strategies against invasive species because they combat new invasions before they expand beyond feasible control;
- (c) Implementing these strategies requires the State of Alaska to enhance its capacity to prioritize risks, prevent new invasions, employ early detection and rapid response techniques, apply state of the art control and management strategies, coordinate multiple public and private efforts and involve the public; and
- (d) State agencies with a responsibility for detecting, controlling and preventing the spread of harmful invasive species in Alaska need a mechanism for cooperation and collaboration to meet the threat of invasive species.

### II. Definitions

- (a) “Aquatic invasive species” means an invasive species with a life cycle that is at least partly dependent upon fresh, brackish, or marine waters. (*from Washington Admin. Code § 77.135.010(1)*)
- (b) “Aquatic conveyance” means transportable personal property having the potential to move aquatic invasive species from one aquatic environment to another. Aquatic conveyances include but are not limited to watercraft and associated equipment, seaplanes, construction equipment, fish tanker trucks, hydroelectric and irrigation equipment, personal fishing and hunting gear, and materials used for aquatic habitat mitigation or restoration. (*from Wash. Rev. Code § 77.135.010(1)*).
- (c) “Department” means Alaska Department of Fish and Game.
- (d) “Drain Plug” means a valve or device used to control the drainage of water from a compartment designed to hold water, such as a bilge, livewell, or ballast tank. (*from Model WID Framework*)



- (e) “Introduction” or “introduce[d]” means the intentional or inadvertent release, escape, dissemination, establishment, or placement of a species into an ecosystem outside its natural range as a result of human activity or failure to act. (*from ELI model law*)
- (f) “Incipient population” means a small localized population of an invasive species that is beginning to reproduce and/or become established in an area or ecosystem.
- (g) “Invasive Species” means a species, including the seeds, eggs, spores, larvae, or other biological material capable of propagation of the species, that is not native to the state or ecosystem of interest and the presence of which may cause economic or environmental harm or harm to human health. (*adapted from Alaska HB 177*)
- (h) “Prohibited invasive species” means a nonnative species determined by the department under [cross-reference to relevant authority; here Section IV] to have a high risk of becoming an invasive species and may not be possessed, imported, purchased, sold, propagated, transported or released into state waters except with a permit.
- (i) “Seaplane” means an aircraft that is capable of landing on and taking off from the water.
- (j) “Unlisted non-native species” are non-native species that have not yet been classified by the department as prohibited, restricted, or approved.
- (k) “Watercraft” is defined in AS 05.25.100.

### **III. Powers of Commissioner of Fish and Game**

- (a) In response to the occurrence of an invasive species or need for control or other management action related to an occurrence, the commissioner of Fish and Game may:
  - (1) consistent with state and federal law, use chemical, biological, mechanical, or physical methods, singly or in combination, to control the occurrence of or eradicate an invasive species; (*from Alaska HB 177*)
  - (2) authorize or conduct surveys, mapping efforts, or investigations of any land or water, public or private, within the state where invasive species may be known or reasonably suspected to be present;
  - (3) summarily open or close a season or area under AS 16.05.060 to aid in responding to the occurrence of an invasive species; (*from Alaska HB 177*)
  - (4) issue orders, regulations, quarantines, and embargoes relating to:
    - i. control and eradication of invasive species;
    - ii. examination and inspection of premises containing products, articles, and commodities carrying invasive species;



- iii. inspection and decontamination of aquatic conveyances;
- iv. establishment and operation of inspection stations;
- v. establishment of quarantines for prevention, control, or eradication of invasive species; and
- vi. tests and analyses that may be made and hearings that may be held to determine whether the commissioner will issue a stop order or quarantine.

(b) In responding under (a) of this section to the occurrence of an incipient population of an invasive species, the department shall provide reasonable notice to affected property owners and shall consider the potential effects of its response measures on private property while selecting the most effective methods to eradicate or control the invasive species. (*from Alaska HB 177*).

#### **IV. Classification and Listing of Non-Native Species**

- (a) The department shall, in consultation with the Department of Natural Resources, establish and maintain a list of prohibited invasive species, regulated invasive species, and approved non-native species. The department shall consider the following criteria in classifying a non-native species under this chapter:
  - (1) the likelihood of introduction of the species if it is allowed to enter or exist in the state;
  - (2) the likelihood that the species would naturalize in the state if it were introduced;
  - (3) the magnitude of potential adverse impacts of the species on native species and on outdoor recreation, commercial fishing, and other uses of natural resources in the state;
  - (4) the ability to eradicate or control the spread of the species if introduced in the state; and
  - (5) other criteria the commissioner deems appropriate.
- (b) Non-native mammals and birds identified by statute as livestock and non-native plants identified by statute as commodity crops shall be listed as approved non-native species.
- (c) The Commissioners of Fish and Game and Natural Resources may adopt rules regulating the possession, importation, purchase, sale, propagation, transport, and escape of listed species under their respective jurisdictions.

#### **V. Prohibited Acts**

- (a) No person may possess, import, purchase, sell, barter, distribute, propagate, transport, export or introduce a prohibited invasive species, except under a permit issued by the department [under authority] for the purposes of disposal, control, research, or education, or another purpose approved by the department. The department may seize or dispose of any specimens



of prohibited invasive species unlawfully possessed, imported, purchased, sold, propagated, transported or introduced in the state.

- (b) No person may possess, import, transport, release, export, or assist in importing, transporting, releasing, or exporting a regulated invasive species without a permit issued by the department [under authority]. (*proposed language per 5 AAC 92.029. Permit for possessing live game.*)
- (c) Species classified as approved non-native species are not subject to any other provisions of this Title. The department may at a subsequent time, based on additional information, reclassify any approved non-native species as a prohibited invasive species or restricted invasive species.
- (d) No person may introduce or import an unlisted non-native species. Any person may petition the department to classify and list an unlisted non-native species under [cross-reference to authority; here Section IV(a)].
- (e) A person applying for a permit under section (a) or (b) shall file with the commissioner of the Department of Revenue a bond or deposit, in the form and in the amount determined by the department, to pay for the costs and damages associated with an escape of a prohibited or regulated species. The bond required by this section remains in effect until cancelled by action of the surety, the principal, or the commissioner.

## **VI. Infested Waters**

- (a) The department shall, in consultation with the Department of Natural Resources and Department of Environmental Conservation, designate a water of the state as an infested water if the department determines that the water contains a population of an invasive species that may spread to other waters if use of the water and related activities is not regulated to prevent this spread. (*adapted from North Dakota Cent. Code § 20.1-17.04*).
- (b) In infested waters,
  - (1) Transport of surface water is prohibited unless authorized by the department;
  - (2) Harvest of bait is prohibited unless authorized by the department;
  - (3) Aquatic bait and fish must be transported without water. Fish transported and held in or on ice are allowed.
  - (4) Floatplane use is prohibited; and
  - (5) Docks, floats, and similar infrastructure may not be removed and placed in another water of the state unless authorized by the department.



**VII. Aquatic Conveyances** (*from model WID framework*)

- (a) Upon removal of a aquatic conveyance from state waters, a person must, to the extent practicable, and in accordance with applicable requirements and protocols established by the Department:
  - (1) Clean the aquatic conveyance by removing all visible organic material, including, but not limited to, plants, animals, and mud;
  - (2) Drain the aquatic conveyance by removing any drain plug that prevents water drainage and run any pumps on board to expel water; and
  - (3) To the extent practicable, dry all compartments, spaces, and associated equipment that holds or may hold water to remove any standing water.
- (b) All drain plugs must be removed during any out-of-water transport of aquatic conveyances.
- (c) A person shall not transport an aquatic conveyance with aquatic vegetation attached on or within the aquatic conveyance.

**VIII. Funding** (*verbatim from Alaska HB 177*)

The aquatic invasive species response fund is established in the general fund. The fund consists of appropriations made to the fund. The purpose of the fund is to pay for responses to aquatic invasive species carried out under [X authority]. Money appropriated to the fund may be spent for responses made to control the occurrence of or to eradicate an aquatic invasive species [x] without further appropriation. Money appropriated to the fund does not lapse.

**IX. Invasive Species Coordinating Committee** (*adapted from Texas Title 07.766*)

- (a) There is established in the Department an Invasive Species Coordinating Committee to provide policy-level direction, planning, and coordination for combating harmful invasive species throughout the state and preventing the introduction of others that may be potentially harmful.
- (b) The member agencies of the committee are:
  - (1) Alaska Department of Fish and Game
  - (2) Alaska Department of Natural Resources
  - (3) Alaska Department of Environmental Conservation
  - (4) Alaska Department of Transportation



- (5) On the request of a state agency that has an interest in preventing or controlling invasive species, the member agencies listed in (b) by unanimous agreement may add the agency to the committee.
- (c) The committee is composed of one representative of each member agency. The commissioner of each member agency shall designate one individual to serve as the agency's representative on the committee and one individual to serve as an alternative representative. If an agency's representative is unable to attend a committee meeting or otherwise perform the representative's duties, the agency's alternate representative shall serve in the representative's place.
- (d) The commissioner of each member agency:
  - (1) may change the designated representative or alternate representative at will; and
  - (2) after designating or changing the representative or alternate representative, shall promptly notify the committee in writing of the name and position of the new representative or alternate representative.
- (e) The committee shall:
  - (1) serve as a catalyst for cooperation between state agencies in the area of invasive species prevention, control, and management;
  - (2) serve as a catalyst for cooperation among state, federal, tribal, and local agencies and organization for prevention, control and management of invasive species statewide;
  - (3) facilitate governmental efforts, including efforts of local governments and special districts, to prevent and manage invasive species;
  - (4) provide a forum for developing coordinated interagency strategies and policies for invasive species control;
  - (5) provide technical information and input to regional and national invasive species control coordination efforts, including the National Invasive Species Management Plan;
  - (6) report as needed to the governor, lieutenant governor, and speaker of the house of representatives on committee plans, work product, and accomplishments.
- (f) The committee shall meet at least quarterly.
- (g) The committee shall adopt bylaws governing the committee's operations. The bylaws should provide:
  - (1) a procedure to periodically elect one representative as committee chair;



- (2) a procedure to call committee meetings; and
- (3) a procedure for the creation of subcommittees and advisory committees.