

# State Laws Versus Invasive Species

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**Like the American court system, a well-functioning** environment is an adversarial system. Invasive plants and animals disrupt this system. Invasive animals often have no natural predators and outcompete native species for food and resources. Recognizing this rising threat, the U.S. Congress enacted the first anti-invasive species law, the Lacey Act of 1900. Since then, states have followed suit.

Like the federal government, states have enacted their own invasive species laws and take enforcement action against civil and criminal violations of those laws. The laws, explored in more detail as found in state administrative codes, give state conservation officers the power to cite, detain, and even arrest violators. The direct enemy of these state laws are invasive species themselves. Just because invasive species can escape the courtroom, however, does not mean that the humans who possess or transport them can. While many states have laws that make introducing, selling, and/or transporting invasive species illegal, enforcement history is hard to find. Yet, convictions aren't unheard of. For example, in May 2022, an Ohio woman admitted to violating the Lacey Act by selling marbled crayfish in violation of state law. She faces a \$100,000 fine.<sup>1</sup>

## State Enforcement and Passive Acts

Many of the more publicized convictions related to invasive species involve either zebra or quagga mussels, small invasive mollusks which can rapidly reproduce and wipe out food sources for native species and also adhere to fixtures in water, causing extensive damage such as by clogging water intake structures. Minnesota is one of the states known to hold people accountable for transporting zebra mussels. In 2011, Minnesota conservation officers arrested a man from Fargo, North Dakota for transporting zebra mussels that were on a boat lift.<sup>2</sup> Notably, the officers had proof that the Fargo man knew that the mussels were present on the lift – after a witness said he told the man there were zebra mussels

on his boat lift – and chose to remove it from a lake and transport it anyway. After officers caught the man, he was charged with a misdemeanor and faced up to 90 days in jail. He pleaded guilty and was fined \$500 and paid \$500 in restitution.<sup>3</sup> Fortunately, the man's unlawful act alerted the Minnesota Department of Natural Resources that the lake from which the lift was removed had zebra mussels. The DNR treated the lake to kill the mussels, at a reported \$18,000 price tag.

Another state with a history of mussel-related enforcement is California. There, as with more and more U.S. states, quagga mussels are a threatening invasive species. Some violations of invasive species rules in California are easier to detect. For example, Lake County, in Central California, requires boats to display quagga mussel inspection stickers while on any waterbody in the county. In 2011, a Lake County Deputy Sheriff apprehended a man operating a boat on Clear Lake, arresting the boater for failing to have a mussel inspection sticker on his boat.<sup>4</sup> In February 2022, the county reported its lakes were still quagga mussel-free, and that it had issued 21,000 inspection stickers in 2021.<sup>5</sup>

## State Enforcement of Commercial Violations

Some invasive species crimes result not from the carelessness of the violator but are motivated by the chance to gain a profit. An example of this for-profit phenomenon can be found in a 1986 U.S. Supreme Court case from Maine.<sup>6</sup> In *Maine v. Taylor*, a bait dealer was indicted under the Lacey Act of 1900 which bans the transportation of fish in interstate commerce when that transportation violates state law. The bait dealer arranged the transportation of over 150,000 golden shiners, nonnative species that can host parasites dangerous to native fish, into Maine in violation of state law. After he was convicted, the dealer appealed, arguing that Maine's statewide ban on importing live baitfish



Credit: Tom Britt

violated the Commerce Clause of the U.S. Constitution, which prohibits the government from discriminating or posing an undue burden on interstate commerce.

Eventually, the U.S. Supreme Court reviewed his claims and rejected his argument, holding that Maine's statute did not violate the Commerce Clause because it served a legitimate local purpose that could not be accomplished in a less discriminatory manner. This case laid a foundation for state enforcement of commercial invasive species crimes by demonstrating that states can constitutionally prohibit the interstate trafficking of invasives.

A more recent instance of transportation and sale of an invasive species occurred in Wisconsin in 2016. Like invasive species laws in many states, Wisconsin law bans the live transport of invasive carp. These fish can quickly overtake waterways, grow up to 80 pounds, and jump 10 feet out of the water, giving the state law strong justification to protect its boaters and natural resources. Reportedly, after a citizen filed a complaint accusing a market of selling

invasive carp, the Wisconsin Department of Natural Resources traced the fish back to a fish dealer.<sup>7</sup> The dealer was convicted of numerous violations, including the illegal possession and sale of over 9,000 pounds of these fish. This was the state's first conviction related to illegal possession and sale of invasive carp. Yet, had the dealer cut the gills or gutted the fish – thus removing the threat of their invading a waterway – the possession and sale would not have broken Wisconsin law.

Another example of selling live invasive fish occurred in New York in 2011. There, a fish dealer sold a large volume of northern snakehead fish he had imported – nearly 4,000 fish in multiple shipments from China in violation of state law.<sup>8</sup> Snakeheads are toothy creatures that can devour native fish, reproduce quickly, and even travel short distances on dry land. They have few natural predators in the United States. They are also said to be delicious. Officers arrested the fish dealer for importing the illegal fish. He faced felony charges and up to four years for his crimes.

### Difficulty in Enforcement

Ultimately, the list of prosecuted violations of state invasive species laws is short. And surely, violators get away with their crimes. This is due in no small part to the difficulty of enforcing state invasive species laws. There are a variety of factors at play. First, states must have the resources to enforce these laws. Most invasive species crimes, especially in the southeastern United States, likely fall in the wheelhouse of conservation officers, although sheriff departments and municipal police departments also make arrests related to invasive species. For laws to mitigate the spread of invasive species, there must be enough conservation officers to address would-be violators. If law enforcement were the only tool to prevent the spread of invasive species, there would have to be enough officers to check at every boat ramp and fishing hole to see if invasive plants are clinging to a boat or if an invasive species is being used as bait – an impossible task.

However, history shows that a greater number of conservation officers does not mean success in invasive species management. For example, Florida's Fish and Wildlife Conservation Commission employs the largest number of conservation officers of any state in the Union.<sup>9</sup> Yet, a search of recent news publications and case databases found no reports of Florida prosecutions stemming from its laws and regulations pertaining to invasive species. Perhaps an educated public offers a better way of enforcement.

### Mississippi and Alabama Laws

Mississippi and Alabama face gaps in effective invasive species management. For example, both Mississippi and Alabama employ fewer conservation officers than surrounding states.<sup>10</sup> And compared to Maine laws that categorically prohibit importing any live baitfish and smelts, Alabama bans importing only wild caught bait.<sup>11</sup> The law allows importing commercially produced baitfish that may carry diseases harmful to native fish. Mississippi bans exporting but not importing wild caught bait,<sup>12</sup> but prohibits releasing non-native species into state waters.

The states have been active in improving their legal battles against invasives. Mississippi and Alabama have issued Aquatic Nuisance Species Management Plans, with Alabama's plan approved in 2021.<sup>13</sup> The Management Plans focus on aquatic invasives, and they secure the states approximately \$100,000 per year in federal funding to fight invasives.

The Management Plans benefit the states by allowing them to prioritize certain invasives and use federal funds to remove or raise awareness of them, but the actions still depend on effective, up-to-date state laws for enforcement power. Mississippi and Alabama both maintain blacklists of species that are illegal to import. Yet, Mississippi's blacklist remains unchanged since 2011.<sup>14</sup> And while Alabama amended its invasive animal blacklist in 2020,<sup>15</sup> its invasive plant blacklist has been left untouched since 1999.<sup>16</sup> 🦋

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### Endnotes

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3. MPR News, *N.D. Man Sentenced in Minn. Zebra Mussel Case* (March 2, 2012).
4. Lake County News, *Boater Arrested for Invasive Mussel Sticker Violation*, (Aug. 18, 2011).
5. Lake County Record-Bee, *Lake Remains Quagga-Mussel Free For Now* (Feb. 15, 2022).
6. *Maine v. Taylor*, 477 U.S. 131 (1986).
7. Bob McNally, *Wisconsin Fish Dealer Convicted of Illegally Selling, Transporting 9,000-Plus Pounds of Invasive Carp*, Outdoor Life (March 22, 2022).
8. Reuters, *New York Man Charged with Importing Banned Fish from China* (April 28, 2011). While the accused admitted committing the crime, no report was found on his sentence.
9. U.S. Bureau of Labor Statistics, *Occupational Employment and Wage Statistics* (May 2021).
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12. 40 Miss. Admin. Code Pt. 3, R. 3.1.G.4.
13. David Rainer, *Alabama Aquatic Nuisance Species Management Plan Approved*, Alabama Department of Conservation and Natural Resources (Feb. 17, 2022). For Mississippi and other Southeastern and Gulf states' management plans, see <https://www.gsarp.org/library-state-ans-plans/>.
14. 2 Miss. Admin Code Pt. 1, Subpt 4, Ch. 11, § 104.
15. Ala. Admin. Code r. 220-2-.26.
16. Ala. Admin. Code r. 220-2-.124.