

NORTH CAROLINA

Summary Table of Agency Authorities:

State Agency	Scope of Authority	Explicit Authority to Enter Private Land without Consent	Process Required	Relevant Provisions
Department of Environment and Natural Resources	Noxious Aquatic Weeds	NCDENR may enter upon private property to conduct investigations and engage in aquatic weed control activities.	None stated	N.C. GEN. STAT. ANN. § 113A-223
		NCDENR may control, remove, or destroy any noxious aquatic weed located in state waters and adjacent areas.	None stated	N.C. GEN. STAT. ANN. § 113A-223
Department of Agriculture and Consumer Services	Plant Pests	NCDACS may enter upon and inspect any premises to determine presence or absence of injurious plant pests.	No notice requirement, but entry is only authorized between sunrise and sunset on working days.	N.C. GEN. STAT. ANN. § 106-422
		If a property owner fails to take action to eradicate plant pests upon notice from NCDACS, agency may “take such measures as shall be necessary to eradicate such pests.”	Must provide written notice to property owner and provide reasonable time to comply.	N.C. GEN. STAT. ANN. § 106-421

Explanatory Notes:

North Carolina does not have a comprehensive invasive species law. Legislative and regulatory efforts have focused primarily on invasive plants. The Department of Environment and Natural Resources has management authority over aquatic weeds,⁷⁷ while the Department of Agriculture and Consumer Services has management authority over plant pests.⁷⁸ North Carolina also has an Invasive Plant Council, which is a non-profit organization of volunteers from academia, conservation organizations, government agencies, nursery and landscape industries, and public gardens, as well as private citizens. The council is

⁷⁷ N.C. GEN. STAT. ANN. Chapter 113A Pollution Control and Environment.

⁷⁸ N.C. GEN. STAT. ANN. Chapter 106 Agriculture.

affiliated with the Southeast Exotic Pest Plant Council, and serves as an outreach organization focused on exotic pest plants.⁷⁹

Department of Environment and Natural Resources

Pursuant to the Aquatic Weed Control Act, the North Carolina Department of Environment and Natural Resources (NCDENR) has the authority to control and regulate “noxious aquatic weeds to preserve human health, safety, and the beneficial uses of the waters of the State to prevent injury to property and beneficial plant and animal life.”⁸⁰ The NCDENR has not further defined its authority through regulations, but has adopted a list of noxious aquatic weeds.⁸¹

The Aquatic Weed Control Act gives the NCDENR authority to enter private property to investigate and control aquatic weeds. In addition, the NCDENR is empowered to control, remove, or destroy noxious aquatic weeds in state waters, as well as in areas adjacent to state waters if the weeds are threatening to invade those waters.⁸² The statute and regulations are silent as to the procedures the NCDENR must follow to enter into private property.

It should be noted that the Aquatic Weed Control Act also gives the Department of Agriculture & Consumer Services the authority to “regulate the importation, sale, use, culture, collection, transportation, and distribution of a noxious aquatic weed as a plant pest.”⁸³ The Department’s plant pest authority is discussed in detail below.

Department of Agriculture & Consumer Services

The North Carolina Department of Agriculture & Consumer Services (NCDACS) has the authority to manage plant pests in the state. Plant pests are “any insect, mite, nematode, other invertebrate animal, disease, noxious weed, plant or animal parasite in any stage of development which is injurious to plants and plant products.”⁸⁴ The Board of Agriculture has the authority to regulate the eradication, repression, and prevention of the spread of plant pests in the state.⁸⁵

Agents of the NCDACS may enter any premise in the state to inspect the property and determine if a plant pest is present; however, the inspection must happen between sunrise and sunset on “working days.”⁸⁶ The NCDACS can order persons to eradicate plant pests on private premises by mailing written notice to the person.⁸⁷ If the person does not follow the order within the prescribed time period, authorized agents of the NCDACS can take necessary measures to eradicate the plant pests on private property without the owner’s consent, but only after written notice is given to the property owner and the owner fails to act in a reasonable amount of time. The NCDACS is authorized to collect the costs of eradication from the property owner.

⁷⁹ NORTH CAROLINA INVASIVE PLANT COUNCIL, <http://nceppc.weebly.com/about-us.html> (last visited September 30, 2015).

⁸⁰ N.C. GEN. STAT. ANN. § 113A-223.

⁸¹ 15A N.C. ADMIN. CODE 2G.0602.

⁸² N.C. GEN. STAT. ANN. § 113A-223.

⁸³ *Id.* § 113A-224.

⁸⁴ *Id.* § 106-419.

⁸⁵ *Id.* § 106-420.

⁸⁶ *Id.* § 106-422.

⁸⁷ *Id.* § 106-421.

In situations where a noxious aquatic weed is also classified as a plant pest, it is unclear which agency's authority takes precedence, if at all. Depending on the type of management actions needed to address a given threat, the agencies' authorities might be complementary, rather than conflicting. Decisions regarding which agency authorities to draw upon will likely depend on available resources and agency priorities.