

DELAWARE

Summary Table of Agency Authorities:

State Agency	Scope of Authority	Explicit Authority to Enter Private Land without Consent	Process Required	Relevant provisions
Department of Natural Resources and Environmental Control	Nonnative and invasive wildlife species	No explicit authority to enter private land, but DNREC may issue orders authorizing the “take, harvest, or capture of any non-native species of wildlife.”	Administrative order	DEL. CODE ANN. tit. 7, §§ 800-802
	Nonnative and invasive finfish	No	N/A	DEL. CODE ANN. tit. 7, § 942; 7-3000-3500 DEL. ADMIN. CODE § 3545
Department of Agriculture	Plant pests	Yes, if owner fails or refuses to apply control measures prescribed by DDA.	Administrative order (control order) must be issued first; DDA may cause the prescribed control to be applied upon lack of compliance.	DEL. CODE ANN. tit. 3, § 1103
	Noxious weeds	No explicit authority to enter private land without consent. However, pursuant to a cooperative agreement with a county, the DDA may undertake a control program on public or private lands.	Negotiation of a cooperative agreement with a county certified to the Secretary of State.	DEL. CODE ANN. tit. 3, § 2403; 3-800-801 DEL. ADMIN. CODE § 801-2.0

Explanatory Notes:

Delaware does not have an comprehensive invasive species law. Management in the state is split between the Department of Natural Resources and Environmental Control, which regulates wildlife and finfish, and the Department of Agriculture, which regulates plant pests and noxious weeds. In addition, Delaware has an invasive species council aimed at protecting “Delaware’s ecosystems by preventing the introduction and reducing the impact of non-native species.”¹ The Council is incorporated as a non-profit organization.

¹ By-Laws, Delaware Invasive Species Council, Inc., http://delawareinvasives.net/yahoo_site_admin/assets/docs/2011DISCBylaws.307123207.pdf.

Delaware Department of Natural Resources and Environmental Control

The Delaware Department of Natural Resources and Environmental Control (DNREC) has separate statutory authority for non-native wildlife and finfish control and management. In terms of non-native wildlife, Delaware has chosen to distinguish between “non-native” and “invasive” wildlife species. Non-native wildlife species include: (1) “those wildlife species exclusive of finfish, that, as determined by the Department, have not historically and naturally occurred in Delaware” and (2) “that are or become present through natural range expansion or through human actions to include but not limited to unintentional or intentional introduction or release.”² Invasive wildlife species are a subset of non-native species “whose presence, establishment, or proliferation causes or is likely to cause, as determined by the Department, biological or environmental harm to native wildlife species or their habitats or associated economic harm.”³

The DNREC is authorized to establish rules governing the importation, possession, transportation, disposition, introduction, release, elimination, harvest, or management of non-native and invasive wildlife species “in any specified localities” that the DNREC thinks is necessary to protect or conserve “native wildlife species or their habitats or for the protection of agriculture, domestic animals, property, or human health or safety.”⁴ The DNREC may issue orders to listed entities, which include agencies, organizations, businesses, and individuals, “authorizing and specifying the times and means ... to take, harvest, or capture any species of non-native wildlife that is or has the potential to become ... seriously injurious to native wildlife or their habitat or to agriculture, domestic animals, property, or human health or safety.”⁵ There is no explicit authority in this statutory provision enabling the DNREC to access private land without the consent of the owner.

The DNREC also has authority over acquiring, importing, introducing, possessing, transporting, disposing, or releasing invasive finfish.⁶ Again, Delaware distinguishes between non-native finfish and invasive finfish, limiting invasive finfish to non-native species “whose introduction or proliferation causes or is likely to cause, as determined by the Department, economic or environmental harm or harm to human health or safety.” Delaware regulations have further defined invasive finfish to be “any species of the family Channidae, including but not limited to the northern snakehead (*Channa argus*) and blotched snakehead (*C. maculata*); blue catfish (*Ictalurus furcatus*); flathead catfish (*Pylodictis olivaris*); walking catfish (*Clarias batrachus*); and grass carp (*Ctenopharyngodon idella*).”⁷

It is unlawful in Delaware “to transport, purchase, possess, or sell a live invasive finfish without the written permission of the [DNREC].”⁸ The DNREC is “authorized to prescribe and regulate the methods used to take or eliminate invasive finfish species from tidal waters.”⁹ For instance, it is lawful in Delaware for a person to take invasive finfish with any licensed, permitted, and exempt fishing equipment. These powers apply to both public and private tidal waters. The DNREC’s authorities,

² DEL. CODE ANN. tit. 7, § 800 (2012).

³ *Id.*

⁴ *Id.* § 801.

⁵ *Id.* § 802.

⁶ *Id.* § 942.

⁷ 7-3000-3500 DEL. ADMIN. CODE § 3545

⁸ *Id.*

⁹ *Id.*

however, are silent regarding the ability of the DNREC to access private land to conduct control and eradication efforts.

Delaware Department of Agriculture

The Delaware Department of Agriculture (DDA) is responsible for managing noxious weeds and plant pests. The DDA has listed the noxious weeds present in Delaware in its regulations.¹⁰ The statute authorizes the DDA to make investigations, studies, and determinations regarding the presence and extent of noxious weeds and to institute programs of control and eradication for listed weeds. The DDA may enter into agreements with counties under which it may conduct surveys to determine the location and amount of infestations, provide technical and financial assistance to landowners in a cooperative control or eradication program, and “effect a program of mowing, spraying, or other control or eradication practices on road rights-of-way, drainage ditch banks, parks, playgrounds, and other public or private lands.”¹¹ This authority suggests that the DDA can enter public lands for noxious weed survey and control, but it is unclear whether access to private lands can be gained without landowner consent. As the regulation is silent, landowner consent may need to be obtained before implementing the program.

Delaware law also directs the DDA to discover and suppress plant pests. Plant pests “are any pest of plants, agricultural commodities, crop seed, farm products, horticultural products, nursery stock or noncultivated plants. This includes, but is not limited to, insects, snails, nematodes, fungi, viruses, bacterium, microorganisms, mycoplasma-like organisms, weeds, plants or parasitic higher plants.”¹² The law requires the DDA to “seek out all dangerously injurious plant pests destructive to the agriculture, forest, or horticulture interests of the state” and issue orders for any control that is necessary.¹³ The DDA may mark infected or infested plants and is directed to notify the person, owner, or tenant possessing infected premises of the plants presence and any required control measures. The person, owner, or tenant is required to comply with this control order or face civil penalties. If these parties fail to comply with the order, the DDA can conduct the control action.¹⁴ These authorities imply that the DDA may access property to mark and to control plant pest infestations.

¹⁰ 3-800-801 DEL. ADMIN. CODE § 801-2.0.

¹¹ *Id.*

¹² DEL. CODE ANN. tit. 3, § 1103.

¹³ *Id.*

¹⁴ *Id.*