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Too much or not enough? Overview of federal invasive species authorities

(2018 Symposium for Issues in Reptile and Amphibian Conservation & Culture, October 31, 2018, Riverdale, MD)

NISC
NATIONAL INVASIVE SPECIES COUNCIL
— SECRETARIAT —

⋮ Caveats (Bureaucratic Duty)

- Not a legal opinion
- Not an official position
- Final interpretation belongs to the agencies and/or the judicial system.

⋮ Invasive species defined under E.O.13751

- **“Invasive species”** means, with regard to a particular ecosystem, a nonnative organism whose introduction **causes or is likely** to cause economic or environmental harm, or harm to human, plant, or **animal health**.
- **“Non-native species or alien species”** means, with **respect to a particular ecosystem**, an organism, including its seeds, eggs, spores, or other biological material capable of propagating that species, that occurs outside of its natural range.

NOT ALL NON-NATIVE ORGANISMS ARE INVASIVE!

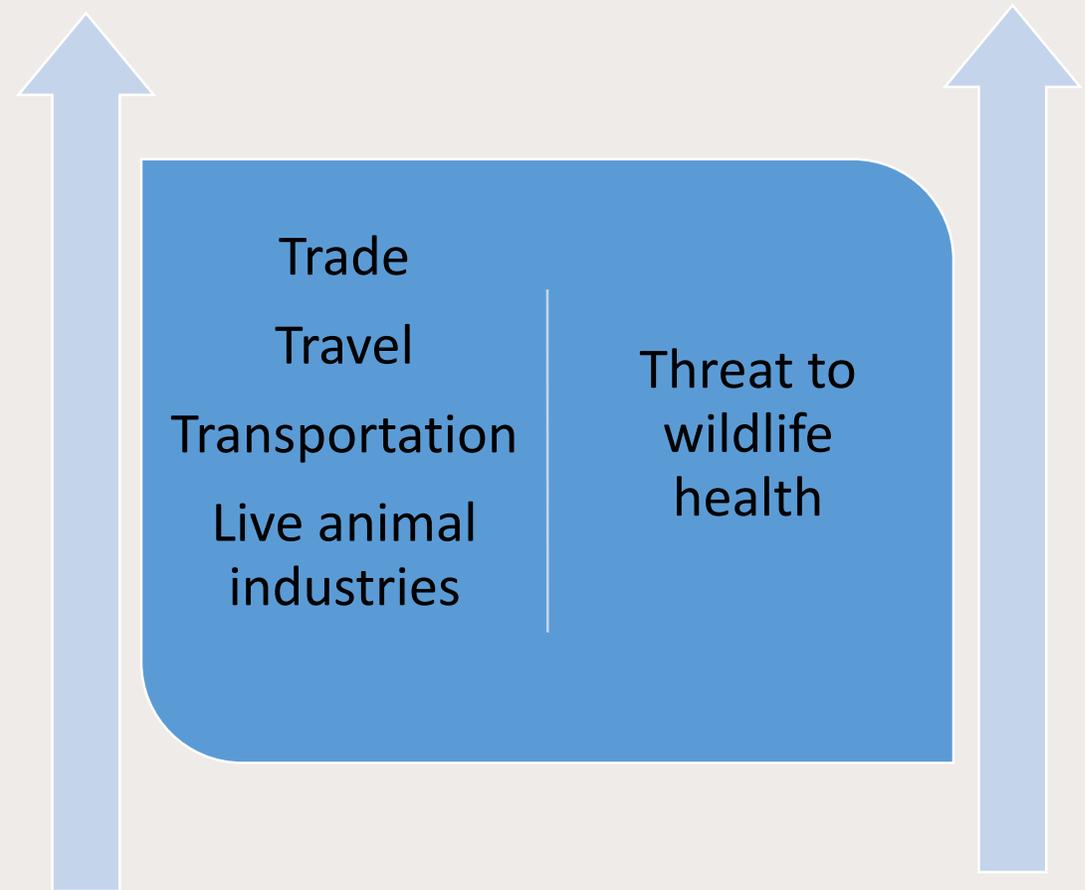
█ Safeguarding the Nation

- Invasive species impact every aspect of national security:
 - human, environmental, plant, and animal health
 - food and water availability
 - the integrity of critical infrastructure
 - livelihoods and survivorship
 - military readiness
- In the US, environmental damages and associated losses from invasive species are already amounting to more than \$100 billion annually.



⋮ Invasive species and wildlife health

- Invasive species have the potential to adversely impact non-native wildlife health
 - Displace species
 - Hybridize
 - Prey on
 - Host and spread pathogens
- Introduction can be intentional or not intentional; legal or illegal; regulated or not regulated.



Herpetofauna and invasive species

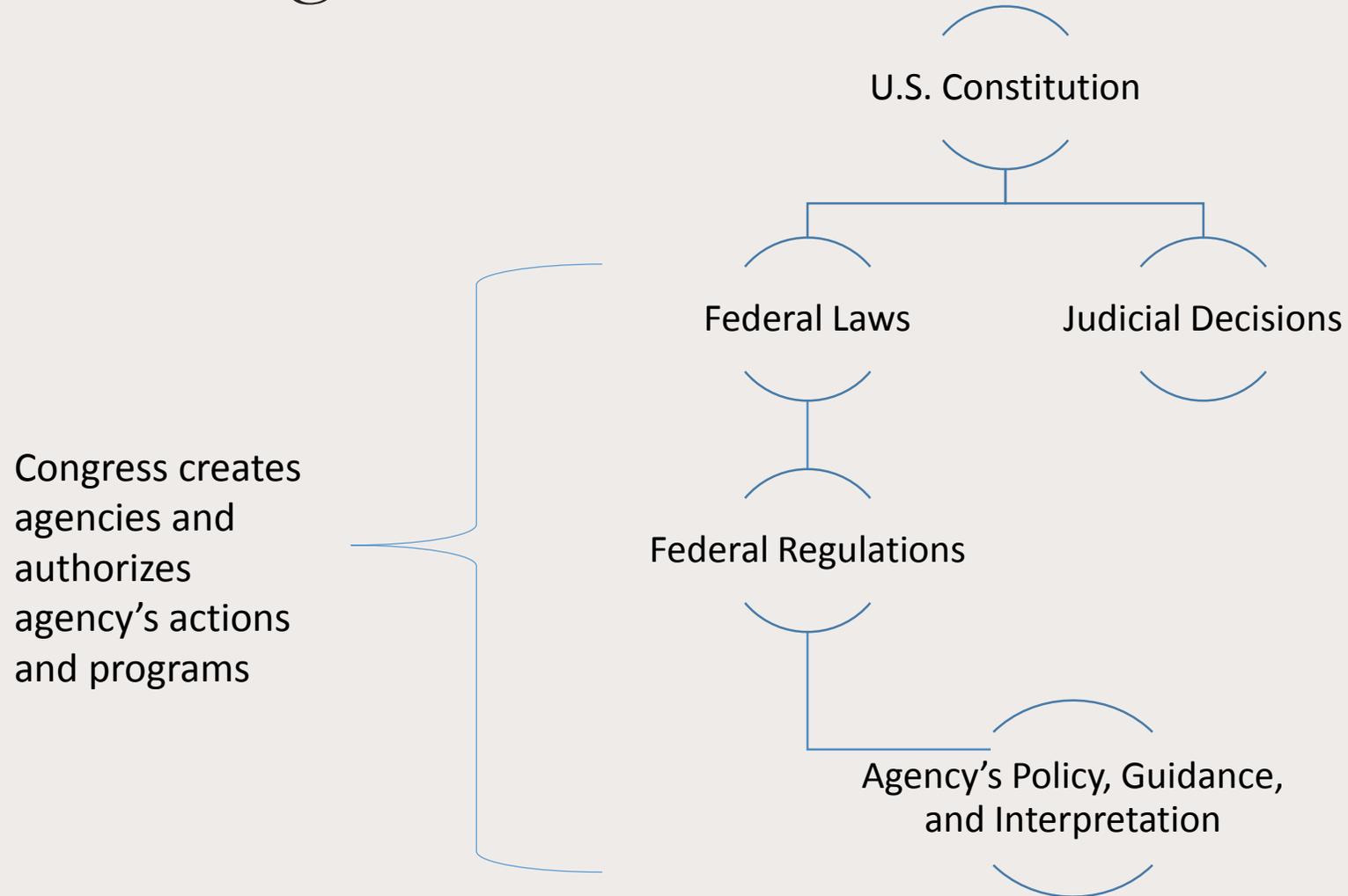
Herpetofauna can:

- 1) Be directly affected by invasive species and/or invasive species management;
 - (e.g. Bsal fungus, pesticide use)
- 2) Have their habitat affected by invasive species and/or invasive species management;
 - (e.g. wildfires, seed dispersal, mechanical vegetation control)
- 3) Be invasive; or
 - (e.g. Burmese pythons, green iguanas)
- 4) Serve as vectors for invasive species
 - (e.g. amphibians carrying BD or Bsal)

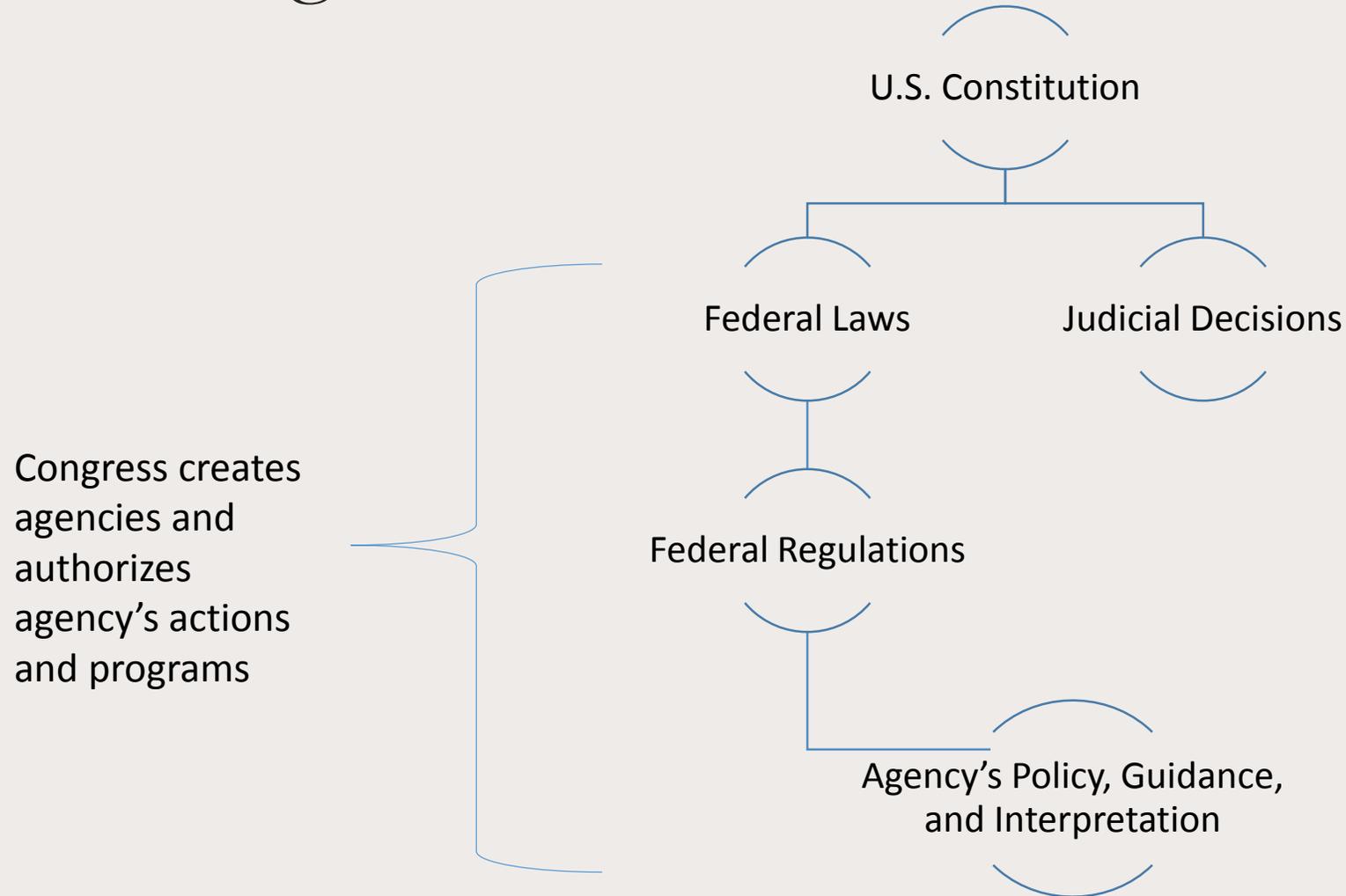


Certain invasive species laws and regulations can be used to protect native herpetofauna and protect native fauna from invasive herpetofauna

U.S. legal authorities



U.S. legal authorities



Considerations:

- Federal limited enumerated powers
- State Rights
- Individual Rights
- International Commitments

Sources of invasive species legal authority

EXPLICIT

- Animal Damage Control Act
- Animal Health Protection Act
- Brown Tree Snake Control and Eradication Act
- Lacey Act
- Nonindigenous Aquatic Nuisance Prevention and Control Act
- National Invasive Species Act
- Plant Protection Act
- E.O. 13112 and 13751

DISCRETIONARY

- Organic / Enabling acts
- Land and water conservation
- Wildlife and habitat protection, conservation, rehabilitation, and restoration
- Infrastructure
- Emergency authorities

Relevant invasive species wildlife authorities

- 1) Animal Health Protection Act (7 USC §§8301 et seq.)
 - Regulates animals and animals disease and pests that affect livestock
- 2) Food, Conservation, and Energy Act of 2008 (7 USC §8322)
 - Regulates detection and eradication of aquaculture species diseases
- 3) Animal Damage Control Act (7 USC §§8351 et. seq.)
 - Authorizes USDA to conduct a program of wildlife services with respect to injurious animals.
- 4) Nonindigenous Aquatic Nuisance Prevention and Control Act (16 USC §4721 et seq.)
 - Establishes a program to prevent the introduction and spread of aquatic nuisance species. Regulates ballast water*

Relevant invasive species wildlife authorities

- 5) Lacey Act [18 USC §42(a)-(b)]
 - Prevents the introduction and movement of injurious species by a listing process that prohibits import and some interstate transport of wildlife determined to be injurious
- 6) Lacey Act Amendments of 1981 (16 USC §§3371 et seq.)
 - Prohibits the importation and transportation of certain species in violation of any law, treaty, or regulation of the U.S., state law, Indian tribal law, or foreign law
- 7) River and Harbor Act (33 USC §610)
 - Establishes a program to prevent, control, and eradicate aquatic invasive species from certain navigable waters
- 8) Brown Tree Snake Control and Eradication Act (7 USC §§8501 et seq.)
 - Control, interdiction, research, eradication, and quarantine protocol
- 9) E.O. 13112 and E.O. 13751
 - Calls upon the federal departments to implement the U.S. policy of preventing the introduction, establishment, and spread of invasive species, as well as to eradicate and control populations of invasive species that are established

There are legal provisions authorizing...

Preparedness

- Planning
- Research / innovation
- Coordination
- Target analysis

Prevention

- Prohibition and / or restriction on importation, movement, mailing etc.
- Pathway regulation

Detection

- Inspection
- Monitoring
- Surveying

Response

- Destruction
- Eradication
- Emergency declaration
- Control

⋮ But, not all species are created equal

- The authorities do not apply to all species or agencies:
 - Numerous departmental and inter-departmental bodies and programs
 - Federal agencies rely on multiple pieces of legislation that are not necessarily coordinated
 - No holistic legislation for invasive species prevention, eradication, control, and coordination across all taxa or ecosystems



■ Gaps in the current approach

- Species specific
 - Species specific (e.g. brown tree snake)
- Action specific
 - (e.g. research, control, importation, rapid response)
- Ecosystem dependent
 - (e.g. forest)
- Industry dependent
 - (e.g. agriculture)
- Taxa dependent
 - (e.g. species that affect livestock)
- Jurisdiction dependent
 - (e.g. federal v non-federal land and waters)
- Geographic dependent
 - (e.g. lower 48 states / states v territories)
- Limits on discretionary powers
 - (e.g. vulnerable to policy changes, cannot exceed provided authority)

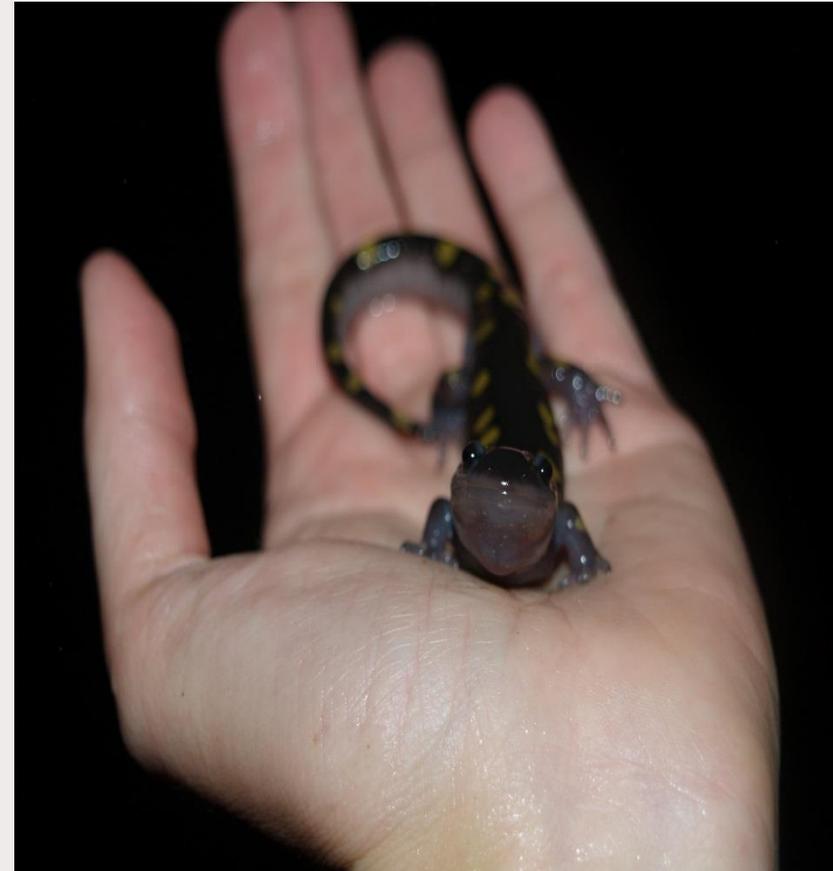
■ ■ ■ Conclusion

- There are numerous explicit and discretionary legal authorities that address invasive species. Nonetheless, the **legal framework of invasive species is fractured and incomplete resulting in a patchwork of laws, regulations, policies, and programs**
- Gaps in the legal framework may not properly address certain invasive species herpetofauna issues
- Cooperation mechanism authority allows the federal government to establish cooperation with subnational governments, industry, and other non-governmental organizations. This could help address federal gaps in invasive species prevention, control, and eradication

⋮ On the horizon – Congressional Action

- 1) H.R. 7005 Wildlife Disease Emergency Act of 2018
 - The bill intends to authorize the Secretary of the Interior to identify and declare wildlife disease emergencies and to coordinate rapid response to these emergencies, and for other purposes.

- 2) H.R.6362 and S.3210 Invasive Fish and Wildlife Prevention Act of 2018
 - The bill intends to improve regulatory processes to prevent the introduction and establishment in the U.S. of injurious wildlife. Includes Lacey Act amendments.



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