

Native Pine Beetle a Problem, But Not an Emergency

by Carol Lippincott, Ph.D, Paynes Prairie Chapter

Many FNPS members are familiar with concerns about significant infestations of the southern pine beetle, especially following severe wildfires (remember 1998?) or storm damage such as that experienced in Miami-Dade County from Hurricane Andrew. The following is adapted from the author's original article published in the "Speaking Out" section of the *Gainesville Sun* on July 22, 2001. While Carol's article addressed a specific situation in Gainesville, her concerns and recommendations are of interest statewide, as southern pine beetle outbreaks are at an all-time high in many counties, the citrus canker debate continues, and other imbalances of nature loom on the horizon.

Hurricanes, contaminated water supplies, and terrorist acts justify declaration of a state of emergency. An outbreak of a native bark-feeding insect does not.

On July 9th, the Gainesville City Commission voted to request that the Florida Department of Agriculture and Consumer Services (FDACS) declare a state of emergency in Gainesville because of an outbreak of southern pine beetles. The city acted on the Southern Pine Beetle Task Force's recommendation. Declaring a state of emergency would authorize FDACS' Division of Forestry (DOF) to inspect private properties without permission and to require that property owners remove beetle-infested trees within 25 days of notification. If they did not, DOF would remove the trees at the property owner's expense.

It is my professional opinion that this insect outbreak does not constitute an emergency and does not warrant suspension of one of the fundamental principles on which the United States of America was founded, the Fourth Amendment right to protection against unreasonable and unwarranted search and seizure. I asked the city to do three things: reverse their decision to be party to a declaration of state of emergency; become fully informed on the scientific issues; and consider the legal implications of such an action.

I am a Gainesville property owner, resident, and professional biologist. My initial academic work on integrated pest management and pest epidemiology in agricultural systems led to a graduate thesis on biological control of agricultural pests and insect population biology. I collaborated with an adjacent research lab working on methods to control native pine beetles in southeastern forests. I was an agricultural inspector for FDACS in South Florida and conducted surveys to detect non-native pests such

as Mediterranean fruit fly and citrus canker. Subsequently, I worked in code enforcement to implement Miami-Dade County's ordinance protecting urban tree canopy and remaining natural forests. I also started a regional program to protect endangered plants in South Florida, and saw the damage that invasive non-native plants can do to native ecosystems. This led to my doctoral work on the ecology of non-native invasive species in Central Florida pine forests. I now manage a regional watershed restoration program for the state.

The state legislature has given FDACS the statutory authority under Chapter 581.111 to declare an emergency if it determines that a plant pest is a public nuisance or threatens agriculture. Under this statute, private property owners have no right to maintain a public nuisance if it occurs on their property. This statute does not require FDACS to provide scientific standards for declaring a nuisance. The definition is based solely on the professional judgment of FDACS scientists and their consultants.

FDACS has declared emergencies to prevent establishment of the non-native Mediterranean fruit fly, "Med fly," in Florida. Med fly larva would widely infest fleshy fruits and vegetables if the fly became established (without natural enemies) in Florida. While the department's eradication methods have been contested, the program's scientific basis is sound. Med fly clearly poses a threat to Florida agriculture.

FDACS has also declared emergencies to prevent establishment of citrus canker disease on the basis that it poses a threat to the citrus industry in Florida. When FDACS inspectors find citrus canker, as they did last year in South Florida, they destroy all citrus trees, infested or not, within a zone around the infestation at the state's expense. Some scientists, however,


believe that citrus canker is already well established in Florida, making such eradication measures futile. FDACS inspectors climbed over and broke down fences and damaged private property during the recent canker campaign. Consequently, citizens are legally challenging FDACS' definition of canker as a nuisance and their right to enter and destroy private property. FDACS has spent over \$1 million in taxpayer funds defending against legal claims. [*On July 31st, an administrative law judge ruled unlawful FDACS' policy of chopping down citrus trees within 1900 feet of one infested with citrus canker.*]

The Gainesville City Commission requested that FDACS declare southern pine beetles a nuisance and institute a state of emergency. The biological difference between this and the previous two cases is that the southern pine beetle is a native insect that has an array of natural enemies; it is not a foreign species such as Med fly that arrived without the natural enemies to keep it in check. Southern pine beetles co-evolved with pine trees. Their numbers increase when pine trees are weakened by drought or other environmental conditions. Their numbers decline as their natural enemies, parasitic insects and wood-pecking birds, reduce their numbers. In the process, weaker pine trees die, healthier pine trees live, and populations of beneficial insects and birds are sustained. The cycle has repeated itself for millennia in the southeastern coastal plain.

The Southern Pine Beetle Task Force has taken the position that immediate compulsory removal of infested pine trees is necessary to slow the spread of these insects and to protect Gainesville's tree canopy. I agree that the outbreak of southern pine beetles is unprecedented in recorded history. On the other hand, pine beetle out-

breaks have been occurring in the region far longer than foresters have been recording them, and pine trees have survived. I do not doubt that southern pine beetles are killing pine trees throughout North and Central Florida, and aggressive suppression measures may save some pine trees. [But] I do not believe that an outbreak of a native insect warrants mandatory suppression measures, at property owners' expense, imposed via suspension of basic civil rights.

I made several recommendations to the Gainesville City Commission. First, to withdraw their request to declare a state of emergency and encourage FDACS not to declare a state of emergency without their consent. Next, to demonstrate to concerned citizens that there is a sound scientific basis justifying use of taxpayer money to take action against a native insect. The city and the DOF should convene a public forum at which a panel of unbiased experts facilitates a robust, balanced, and fair discussion of the scientific data on southern pine beetles. This discussion is critical to restoring public trust in city decisions. If DOF or the city were to decline to participate in such a forum, that would suggest that there is no defensible scientific basis for their approach to this problem. Most importantly, the city needs to consider the legal implications of suspending civil rights to suppress a native insect. The Fourth Amendment of the U.S. Constitution protects citizens against unreasonable intrusion in homes and enclosed yards. FDACS' search and seizure authority is based on a statute stating that non-criminal searches are outside the jurisdiction of the Fourth Amendment. However, this ruling was overturned when the U.S. Supreme Court ruled that any government intrusion, criminal or not, is covered by the Fourth Amendment. FDACS' authority to search and seize appears to be legally obsolete.

There are ways to deal with such outbreaks without exercising police powers to do so. I urge those concerned as I am to get involved and to be open-minded on these issues. To gather information, I have spoken with numerous people about this, including valued friends who are on the Southern Pine Beetle Task Force. Consequently, I have modified my outlook as I've learned from each person. I ask that those in positions of authority and influence not entrench but instead look for better solutions to this problem. 

Since the time Carol's original article was published, the Florida Department of Agriculture and Consumer Services (FDACS) has declared the pine beetle outbreak an "incident" (rather than a "state of emergency"), enabling the allocation of funding and staff to further study the problem.

ABOUT THE AUTHOR: Carol Lippincott is a Project Manager with the St. Johns River Water Management District, overseeing the restoration of large lakes and marshes in the Upper Oklawaha River Basin watershed. A longtime member of FNPS, Carol has been an active contributor in both the Dade and Paynes Prairie Chapters.

Patriotism and Plants

Current news articles highlight "patriotic" gardening with non-native red, white, and blue "bedding" plants. Such plants are typically grown in a highly chemical, petroleum-dependent environment, and when planted, require soil amendments, extra water, and fertilizer to survive. How much more truly patriotic it is to plant natives, which make minimal demands on our precious natural resources and look like Real America! It's time for U.S. gardeners to take pride in our natural heritage and use native plants to promote the best of American values in our gardens.