

# TO KILL A PIGLET

*The State of Michigan does Harper Lee one better with its “Farm Kill” Orders*

By Scott Tips



There were 20 of them, cute and innocent as could be. The farmer raised his shotgun and pumped one shot after another into each one of them, killing every last piglet, and their mothers too. This was heart-wrenching for the farmer, but he knew he had no choice since the State of Michigan was about to descend upon him with a SWAT-style team intending to arrest him as a felon if any of his pigs were found alive on his property. His crime? Harboring an animal that the State had designated as an “Invasive Species.”<sup>/1</sup> And this farmer’s tragedy was not the only one to play out in the State, there were thousands of others facing similar dilemmas.

## **The Invasive Species Order**

The Michigan Invasive Species Order (ISO) that kick-started this series of tragedies went into effect on April 1, 2012. Issued by the Michigan Department of Natural Resources (MDNR) in December 2010, the ISO prohibited all "feral" swine, even on private property.<sup>/2</sup> Unfortunately for those small family farmers breeding heritage pigs, the ISO identified invasive-species pigs using incredibly vague and common characteristics that would cover virtually all pigs and hogs.

As opponents of the ISO have contended, “Pigs can be identified as invasive – and thus eligible for slaughter – regardless of how long they have been part of animal husbandry in

Michigan. They will be rounded up according to the color of their fur (black or striped), their undercoat color (lighter than the topcoat), whether their tails are straight or curly, and other arbitrary characteristics.”/3

The MDNR alleges that it has a feral-pig problem in the State; and heritage breeds, which are raised outdoors in the Sun and with real soil beneath their hooves in fenced-in spaces on family farms, are wrongly threatened with elimination because they “might escape” and become feral. Interestingly enough, less healthy and certainly less happy pigs that are confined to concrete-floored pens and are treated like factory-line commodities have been given a pass by the MDNR. Ironically, then, the inbred “modern” pigs raised in factory farms are permitted to live while the more genetically-diverse and old-fashioned breeds are destroyed.

The civil fines for violating the cited sections of the Invasive Species Act can be daunting. They range from \$1,000 to \$20,000 per violation. Kick in the threat of jail time where the authorities meet resistance and you have a very motivating legal combination forcing men to shoot their pigs.

### **Shakespeare to Blame**

On one hand, it’s hard not to sympathize with those who don’t want native species of animals wiped out through the thoughtless introduction of other species. In 1988, the Eurasian Zebra Mussel was most probably dumped out of bilge water into Lake St. Clair, one of the Great Lakes. Today, they are everywhere, clogging pipes, fouling ship hulls throughout the Great Lakes, and outcompeting and eliminating native mussels. Another problem, the foreign Tiger Shrimp, has been spotted in the Gulf of Mexico and along the U.S. East Coast in rapidly increasing numbers in the last few years. These shrimp feed on, among other things, those shrimp native to the Gulf./4 Some say the outcome of that inter-species battle, in the decades to come, is already a foregone conclusion. Others say, pass the garlic butter.

And in 1890 and 1891, a Bronx resident, Eugene Schieffelin, and his cohorts – with the addled notion that every bird mentioned in the works of Shakespeare should be introduced into the New World – released about 100 starlings from the Old World into Central Park. Today, starlings in North America number more than **200 million!** Other bird species that compete for the same aviary ecological niches have correspondingly declined.

A Federal law, called the National Invasive Species Act, was passed in 1996 to try to augment existing controls for these problems./5 It simply reauthorized and amended the 1990 Non-indigenous Aquatic Nuisance Prevention and Control Act, which dealt with water-borne species. But individual States have their own Invasive Species Orders that they have enacted and enforce with varying degrees of success. As is the trend these days with most governmental actions, the perpetrators are not the Legislatures but rather the unelected bureaucrats to whom the Legislatures or the Chief Executives have delegated (read, abdicated) their authority. In this case, the opening clause of the Michigan ISO has the MDNR announcing its right to issue an administrative order affecting the lives of millions of humans and animals.

### **The Usual Suspects**

Lurking behind the scenes, of course, are the usual suspects – the lobbyists and their bosses, the “concerned” competitors who only want to do what is “right.” Amazingly, though, these competitors’ definition of “right” always seems to fall on the side of what will enhance

their profit margins. As Karl Marx once wrote, “There is a direct connection between a person’s pocketbook and their heart.” He may have been a rotten philosopher, but when it came to this perceived link, Marx definitely had his finger on the pulse of humanity.

With the drop-dead date of April 1<sup>st</sup> (for enforcement of the ISO on pig farms) staring them in the face, Mark Baker of Bakers Green Acres, appeared in front of the Michigan Senate Agriculture Committee to ask that the Senators rescind the MDNR’s Declaratory Ruling specifying the characteristics of prohibited swine, arguing that the Ruling is both biologically and scientifically unsound. Baker’s State Senator had arranged this hearing; and, according to witnesses and the actions that subsequently took place, Baker was evidently very convincing and it seemed as if enough Senators would grant the requested rescission, or at least a 90-day stay./<sup>6</sup>

In a news release, Baker reiterated his arguments. “The DNR says certain breeds of pigs must be banned because there are feral pigs in Michigan,” said Baker. “My pigs, however, are not feral. They are kept inside a fence and are under the care of my family. It is impossible to genetically differentiate between swine, so the department decided certain pigs will be banned due to their appearance. The characteristics they outlined are ridiculous because all pigs have those traits. Honestly, the entire thing seems like a bad April Fool’s joke, but unfortunately for pig farmers like me, it’s not.”/<sup>7</sup>

Not to be outdone, the Big Pork industry lobbyists, representing the Michigan Pork Producers Association, reportedly pulled Michigan State Senators out into the hall for private meetings. It was not reported what passed between the Senators and Big Pork’s representatives; but when the Senate Committee reconvened, those “hallway” Senators withdrew their support for Baker and his Senator. The ISO was confirmed and went into effect on April 1, 2012./<sup>8</sup> Big Money won again, using the coercive tools of government to obtain by force what it could not win fairly in the free marketplace.

### **The Fight Continues**

Lawsuits and other actions abound. Mark Baker and three other parties have retained attorney Joseph O’Leary to carry forward their lawsuit against the MDNR to stop that Agency from continuing to overstep its authority by entering upon private property. At the same time, the MDNR has civil suits pending against pig-farmer Ronald McKendrick and of course his wife Charlene (using the old, pressure-the-wife-to-get-the-husband-to-cave tactic) as well as an Upper Peninsula pig producer, asking the Court to force them to “depopulate” their remaining prohibited swine./<sup>9</sup> Piling onto the fight are two on-line petitions to get the MDNR off the backs of the small farmers./<sup>10</sup>

The anti-MDNR petitioners have said it best: “Small family farms represent the backbone of a local, sustainable food system. While huge industrial farms dominate the market, small farms have been able to thrive by providing high-quality food raised in environmentally healthy ways. This includes livestock humanely raised on pasture.”/<sup>11</sup>

The MDNR is actively and dramatically expanding its reach from public lands into farms and other private property. This is a wrongful and unconstitutional breach of private-property rights, especially upon persons and their livestock, neither of which have caused any harm whatsoever. There are Federal remedies available to stop these blatant violations of the

McKendricks', Baker's, and others' Constitutional rights and these injured parties would be well-advised to investigate filing suits in Federal court to remedy the wrongs done to them. Clearly, the MDNR has become yet another rogue agency.

Small farmers deserve every bit as much protection of their property rights as do the big factory farmers, and it should be recognized especially by a State charged with protecting the health of the public that those farmers raising heritage breeds are helping to preserve genetic diversity and hardier breeds. Just as importantly, they are providing more-ethically raised meats and a real choice for consumers. These farmers, though, are not to be supported in their legal battles simply because they are small producers, they are worthy of support because they have been legally wronged. Large or small, we should all be equally protected in our private-property rights and anything less than equal protection under the law is an injustice.

### **P.S. ISO's Real Promise**

Ironically, enterprising litigants and their attorneys might consider researching the application of these ISOs, or variants thereof, as part of a legal basis to launch novel challenges in the courts against Genetically Modified/Genetically Engineered crops and seeds. "Food" crops such as Monsanto corn, soy, and other altered grains are, after all, non-native and "invasive species." The owners of the patents will argue, naturally, that these are the same species and that therefore there is no difference; but if that were true, then it would completely undercut those same owners' arguments before the U.S. Patent and Trademark Office that their patented crops are distinctive enough to deserve patent protection. They cannot have it both ways. And just maybe, as with Boo Radley in *To Kill A Mockingbird*, an ISO might surprise us and turn out to be a good guy after all.

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<sup>1</sup> Bakers Green Acres, [www.bakersgreenacres.com](http://www.bakersgreenacres.com), accessed May 3, 2012.

<sup>2</sup> "Invasive Species Order," [http://www.michigan.gov/documents/dnr/Invasive\\_Species\\_Order\\_Dec\\_3\\_304173\\_7.htm](http://www.michigan.gov/documents/dnr/Invasive_Species_Order_Dec_3_304173_7.htm), accessed May 3, 2012.

<sup>3</sup> "Governor, State of Michigan: Stop the Imminent Slaughter of Heritage Pigs on Small Farms in Michigan," <http://www.change.org/petitions/governor-state-of-michigan-stop-the-imminent-slaughter-of-heritage-pigs-on-small-farms-in-michigan>, accessed May 3, 2012.

<sup>4</sup> Eyewitness News, "Asian Tiger Shrimp Potential Shrimp Industry Threat," May 1, 2012, <http://www2.wnct.com/news/2012/may/01/2/asian-tiger-shrimp-potential-shrimp-industry-threa-ar-2230816/>, accessed May 3, 2012.

<sup>5</sup> "National Invasive Species Act," [http://en.wikipedia.org/wiki/National\\_Invasive\\_Species\\_Act\\_\(1996\)#Zebra\\_Mussels](http://en.wikipedia.org/wiki/National_Invasive_Species_Act_(1996)#Zebra_Mussels), accessed May 3, 2012.

<sup>6</sup> "Big Pig Lobbyist Uses Cloakroom Tactics to Foil Small Farm Defense," Apr. 3, 2012, <http://hartkeisonline.com/animal-husbandry/big-pig-lobbyist-uses-cloakroom-tactics-to-foil-small-farm-defense/>, accessed May 3, 2012.

<sup>7</sup> "Booher Calls on Governor to Rescind Invasive Species Order on Swine," <http://www.misenategop.com/senators/readarticle.asp?id=4952&District=35>, accessed on May 3, 2012; See a responsive, undated MDNR press release, which can be found at: [http://michigan.gov/dnr/0,4570,7-153-10370\\_12145\\_55230-276322--,00.html](http://michigan.gov/dnr/0,4570,7-153-10370_12145_55230-276322--,00.html).

<sup>8</sup> "Big Pig Lobbyist Uses Cloakroom Tactics to Foil Small Farm Defense," Apr. 3, 2012, <http://hartkeisonline.com/animal-husbandry/big-pig-lobbyist-uses-cloakroom-tactics-to-foil-small-farm-defense/>, accessed on May 3, 2012.

<sup>9</sup> “Invasive Swine Prompts DNR Visit to Renegade Ranch, Case in Court Friday,” <http://www.cheboygannews.com/topstories/x1364613572/Invasive-swine-prompts-DNR-visit-to-Renegade-Ranch-case-in-court-Friday>, accessed May 3, 2012.

<sup>10</sup> Baker’s Green Acres; <http://www.bakersgreenacres.com/> (see two petitions to be found there, which you are encouraged to sign if you live in Michigan and agree with the petitioners), accessed May 3, 2012.

<sup>11</sup> *Ibid.*