



Standing Committee on Social Policy
Legislative Assembly of Ontario Procedural Services Branch
99 Wellesley Street West, Room 1405, Whitney Block Queen's Park
Toronto, ON M7A 1A2

29 September 2015

Via e-mail: vquoic@ola.org

RE: WCS Canada comments on Bill 37, *An Act Respecting Invasive Species, 2015*

Dear Ms. Lim,

Thank you for the opportunity to provide comments to the Standing Committee on Bill 37, *An Act regarding Invasive Species, 2015*.

I am submitting comments in my capacity as Associate Conservation Scientist with Wildlife Conservation Society (WCS) Canada¹. I lead a team that specializes in fish and wildlife ecology, conservation biology, and landscape ecology in northern Ontario. Of particular relevance is our ongoing field and applied work in Ontario's Far North, where invasive species are a key threat to conservation, and our current role on the Ministry of Natural Resources and Forestry (MNR) Bait Review Advisory Group (BRAG) since live bait is an important pathway for invasive species in Ontario². In the past, we have provided public comments to MNR on the *Ontario Invasive Species Strategic Plan (OISSP) discussion paper (EBR Registry No. 011-9780)* and the *Invasive Species Act (EBR Registry No. 012-1120)*.

¹ Wildlife Conservation Society Canada (www.wcscanada.org) was established in May 2004 as a Canadian non-government organization with a mission to conserve wildlife and wildlands by improving our understanding of and seeking solutions to critical problems that threaten key species and large wild ecosystems throughout Canada. We implement and support comprehensive field studies that gather information on wildlife needs and then seek to resolve key conservation problems by working with many actors, including First Nation communities, Government and regulatory agencies, conservation groups, and industry.

² The Fisheries Policy Section in conjunction with Parks and Protected Areas Policy Section (PPAPS) is conducting this process.

We support the need for an Invasive Species Act, as this recognizes and seeks to address the significant and growing threat posed by non-native species, that have invaded terrestrial and aquatic systems, to the conservation of Ontario's species and ecosystems as well as the social and economic impacts.

Given that the current legislative approach in response to invasive species is mostly a patchwork of provincial and federal acts, none of which are focused on invasive species in particular, we think the current legislation represents significant progress in filling this gap as well as supporting ongoing government commitments to conservation in the Great Lakes Basin Ecosystem (e.g., Great Lakes Water Quality Agreement, *Great Lakes Protection Act*) where invasive species are a significant ecological, social, and economic threat. Finally, this legislation could be considered progress by Ontario towards Action 7 and Action 8 in the OISSP to examine the provincial legislative and policy framework for invasive species management and support and strengthen existing legislation, respectively.

We note the following general issues:

1. A lack of emphasis on precaution and prevention that prioritizes science and traditional ecological knowledge where available.
2. The lack of a transparent, science-based process for listing invasive species in Ontario.
3. A lack of emphasis and support for stewardship efforts and programs to control and eradicate invasive species.
4. A lack of attention to Ontario's Far North as a unique environment for proactive planning for invasive species.

I have collaborated with Ontario Nature and Ecojustice to create 10 recommendations and provide specific language (in *italics*) for each recommendation in order to strengthen and improve Bill 37.

Recommendation 1: Include a clear purpose section that prioritizes science-based listing of invasive species, prevention, inter-jurisdictional cooperation and support for stewardship in the control and eradication of invasive species.

Purpose

1.1 The purposes of the Act are:

- (a) to identify and classify invasive species based on the best available scientific information, including information obtained from community knowledge and aboriginal traditional knowledge.*
- (b) to prevent the introduction and spread of invasive species.*
- (c) to promote effective control, and where possible eradication of invasive species, through inter-agency and inter-jurisdictional cooperation and collaboration.*
- (d) To promote stewardship activities to assist in the control and eradication of invasive species.*

Recommendation 2: Include a preamble that informs interpretation and implementation of the legislation, including a precautionary approach that emphasizes prevention.

Preamble

- *Biological diversity is among the great treasures of our planet. It has intrinsic value as well as ecological, social, genetic, economic, scientific, educational, cultural, recreational and aesthetic value. Biological diversity makes many essential contributions to human life and well-being and is a fundamental part of sustainable development.*
- *Alien species, whether of animals, plants, fungi or micro-organisms, are not always a cause for concern. However, a subset of alien species can be invasive and have serious adverse impacts on biodiversity and related ecosystem services, as well as other social and economic impacts, which should be prevented.*
- *Prevention is generally more environmentally desirable and cost-effective than reaction after the fact, and should be prioritized.*
- *The United Nations Convention on Biological Diversity takes note of the precautionary principle, which states that where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.*
- *The intentional and unintentional introduction of invasive alien species into Ontario is a threat to the preservation of biological diversity. Accordingly, the present generation of Ontarians should protect the environment from the threat of invasive species for the benefit of future generations.*

Recommendation 3: Revise section 7 to include a prohibition on permitting a significant threat invasive species to be brought into Ontario.

7. (1) No person shall,

(a) *deliberately or accidentally* bring a member of significant threat invasive species into Ontario or cause *or permit* it to be brought into Ontario; or

(b) *deliberately or accidentally* deposit or release a member of a significant threat invasive species or cause *or permit* it to be deposited or released.

8. (1) No person shall,

(a) *deliberately or accidentally* bring a member of a moderate threat invasive species into a provincial park or conservation reserve or cause or permit it to be brought into a provincial park or conservation reserve; or

(b) *deliberately or accidentally* deposit or release a member of a moderate threat invasive species anywhere in Ontario, or cause or permit it to be deposited or released anywhere in Ontario.

Recommendation 4: Revise section 13 to require that prevention and response plans be prepared for all significant threat invasive species.

13. (1) If the minister is of the view [...] the Minister *shall* cause a prevention and response plan to be prepared, *in consultation with the public*, with respect to *each listed significant threat invasive species*.

Recommendation 5: Amend section 4 to set out a transparent, science-based process for determining the level of threat that an invasive species poses and recommending listing to Cabinet.

4. (1) the Lieutenant Governor in Council *shall* make regulations prescribing invasive species as invasive species to which this Act applies.

Recommendation 6: This science-based listing process should include the creation of an expert committee with the responsibility of assessing and classifying invasive species and advising the Minister.

Identification of invasive species

4 (1) *The Minister shall appoint a committee, consisting of staff of the Ministry and others with relevant expertise and experience, to assist the Minister to identify and assess the threat posed by invasive species. The committee shall perform the following functions:*

(a) Develop and use science-based criteria for assessing the risk to the natural environment, the economy, culture and human health posed by invasive species and for classifying invasive species as moderate threat or significant threat;

(b) Develop, maintain and prioritize a list or lists of species whose level of threat should be assessed or reassessed, including species whose status should be reviewed and, if appropriate, reclassified;

(c) Submit reports to the Minister in accordance with this Act;

(d) Provide advice to the Minister on any matter submitted to the Committee by the Minister.

(2) *A person may be appointed to the Committee by the Minister only if the Minister considers that the person has relevant expertise that is drawn from*

(a) a scientific discipline such as conservation biology, population dynamics, taxonomy, systematics or genetics;

(b) economics; or

(c) aboriginal traditional knowledge.

Recommendation 7: Amend section 7 (2) to clarify when a person shall be deemed to possess an invasive species as well as actions that a person may lawfully engage in once he or she becomes aware that an invasive species is on his or her property.

Possession

7. (2) No person shall possess invasive species in any part of Ontario other than in a prescribed area.

(2.1) For the purpose of subsection (2) a person is not deemed to possess a member of a species solely because it is present on property or within a host organism that the person owns, possesses or controls due to natural processes;

(2.2) For the purpose of subsection (2) a person is deemed not to possess a member of an invasive species if that person is engaging in prevention, control or eradication activities for that species as set out in a prevention and response plan in accordance with section 13.

(2.3) A person who becomes aware of an infestation of an invasive species on property that the person owns, possesses or controls shall notify the Minister in writing.

In addition to these amendments to section 7, add the following related regulation-making powers to section 56:

s. 56 The Lieutenant Governor in Council may make regulations,
(x) prohibiting or regulating the alteration or destruction of habitat for native species or harm to or destruction of an animal in the course of carrying out measures to prevent the spread of, control or eradicate an invasive species;

Recommendation 8: Add a new section promoting stewardship through the establishment of a publicly funded Invasive Species Control and Stewardship Program.

Stewardship Programs

xx. (1). A program to be known as the Invasive Species Control and Stewardship Program is hereby established.

(2) The purpose of the program is to promote stewardship activities that relate to invasive species prescribed under this Act including:

(a) the protection of the natural environment from invasive species;

(b) the implementation of strategies and plans to prevent invasive species from entering Ontario, to control the spread of invasive species in Ontario and to remove and eradicate the invasive species from Ontario;

(c) public education and outreach programs relating to stewardship; and

(d) other activities to assist in the protection of the Ontario environment from invasive species.

(3) As part of the program, the Minister may make grants for the purpose described in subsection (2).

Recommendation 9: Revise sections 19 and 27 to address fairness issues and to ensure that an overly heavy-handed approach to control and eradication does not undermine public willingness to report and voluntarily control and eradicate invasive species on private property. Fairness issues include the potential ecological and economic impacts of the control measures allowed (any physical or mechanical means, any chemical treatments or biological controls), especially considering the uncertainty of success of control measures.

19.

(2) at an invaded place, an inspector may, with respect to the invasive species that is the reason the land, building, structure or conveyance was declared to be an invaded place,

(a) use any physical or mechanical means [*remove “or apply any chemical treatments or biological control measures”*] in order to control, remove or eradicate the invasive species...

Assistance

(3) An inspector may be accompanied or assisted by any person while exercising any powers at an invaded place under this section.

(4) In carrying out the powers under subsection (2) the inspector shall use the least destructive means that is effective in relation to property, including pets, and in relation to the habitat of native species.

(5) In carrying out the powers under subsection (2) involving an animal, the person shall do so in the most humane manner that will control the spread of the invasive species.

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(1) (a), with respect to a significant threat invasive species:

1. Use any physical or mechanical means [*remove “or apply any chemical treatments or biological control measures”*] to remove or eradicate the invasive species, even though the use of such means or application of such treatments or measures may result in damage to property or its removal or destruction.
2. Destroy, by any means, anything that may be a carrier of the invasive species.
3. Such other actions as may be necessary, whether or not it results in damage to property or its removal or destruction.

(3) An inspector, or other person acting on the Minister’s behalf, may enter any land, building or structure for the purposes of carrying out actions under this section but may not enter any building or structure or part thereof that is being used as a dwelling.

(3.1) In carrying out the powers under subsection (2) the inspector shall use the least destructive means that is effective in relation to property and in relation to the habitat of native species.

(3.2) In carrying out the powers under subsection (2) involving an animal, the person shall do so in the most humane manner that will control the spread of the invasive species.

Recommendation 10: Explicitly recognize Aboriginal and Treaty rights.

For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for the existing aboriginal or treaty rights of the aboriginal peoples of Canada as recognized and affirmed in section 35 of the Constitution Act, 1982.

Finally, while beyond the scope of the currently proposed legislation, I would like to take this opportunity to call attention to the need for proactive and preventative measures regarding invasive species in Ontario's Far North. Ontario's Far North provides a clear example of where a preventive approach to invasives is crucial. Anticipated industrial development (e.g., Ring of Fire) that will open up the region through new infrastructure (e.g., roads) and human access is well established as a driver of intentional and unintentional (e.g., bait, live food trade, pet trade) introductions of invasives. In

addition, climate change in this subarctic landscape is projected to affect habitat suitability for many species, making it more favourable for species like smallmouth bass to expand their range and become invasive within the Arctic Watershed. Recognizing this significant threat, the Far North Science Advisory Panel's³ Report, *Science for a Changing Far North*, specifically recommended a proactive approach to planning for development that could "prevent the introduction of invasives" (2010: 104). Yet, current environmental planning processes in the Far North are too piecemeal to instil any confidence that invasives will be addressed proactively within existing legislation. Whether invasive species are considered in the scope of community-based land use plans or the Land Use Strategy being led by MNRF with First Nations under the *Far North Act, 2010* remains to be seen. To our knowledge, none of the approved plans or Terms of Reference include provisions for invasive species or climate change action. Significantly, there are no safeguards in Ontario processes to determine whether invasive species are being introduced intentionally or advancing north with climate change nor what the impacts are likely to be in the Far North. With this current proposed legislation, we remain concerned that proactive planning for invasive species management in the Far North is not being prioritized.

We conclude that invasive species legislation in Ontario is needed. However, the current Bill needs to reflect the recommendations we have provided and include the goals and key action items identified in the OISSP where possible. We remain concerned about the lack of prevention measures in the current Bill as well as the lack of funding and staff resources for MNRF to implement and enforce the Bill if it is passed.

Thank you again for this opportunity to comment. I would be happy to discuss these comments further.

Sincerely yours,



Cheryl Chetkiewicz, Ph.D.
Associate Conservation Scientist

³ Dr. Justina Ray, President and Senior Scientist with WCS Canada was a member of this panel.

