



Ms. Donna Wales  
Ministry of Natural Resources  
300 Water Street, Floor 2  
Robinson Place North Tower  
Peterborough, Ontario K9J 8M5

14 April 2014

**Via e-mail: [donna.wales@ontario.ca](mailto:donna.wales@ontario.ca)**

**RE: Invasive Species Act - EBR Registry No. 012-1120**

Dear Ms. Wales,

Thank you for the opportunity to provide comments on Bill 167, *An Act regarding Invasive Species*. I am submitting comments with input from my colleagues (Drs. Mohammed Alshamli, Brie Edwards, Jenni McDermid, Justina Ray), in our respective capacities as scientists with Wildlife Conservation Society (WCS) Canada<sup>1</sup> specializing in fish and wildlife ecology, conservation biology, and landscape ecology in Ontario. Of particular relevance to the important subject of invasive species have been both our ongoing field and applied work in Ontario's Far North, where prevention of invasive species is a serious conservation issue, and our current role on the Ministry of Natural Resources (MNR) Bait Review Advisory Group (BRAG) to support the modernization of Ontario's policies on bait use and harvest<sup>2</sup>. This follows our comments on the Ontario Invasive Species Strategic Plan (OISSP) discussion paper provided on September 19, 2013.

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

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<sup>1</sup> Wildlife Conservation Society Canada ([www.wcscanada.org](http://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.

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

the conservation of Ontario's species and ecosystems as well as the social and economic impacts. This current proposal also addresses the recommendation made over a decade ago by the Environmental Commissioner of Ontario (ECO) in his 2003/2004<sup>3</sup> report. The ECO called for legislation that required introductions of new species be assessed to determine their potential impact on native ecosystems as well as requiring a regular review of existing legislation. Similarly, Ecojustice also identified the key legal and policy principles required to address invasive species<sup>4</sup> in their 2004 report, including:

- preventative measures to control invasive species introductions
- mitigation programs to address unintentional introductions
- long-term invasive species and ecosystem management, including accountability of all sectors of society
- cost recovery, permit and environmental assessment mechanisms to ensure parties responsible bear the economic burden of control and monitoring
- participation and education programs, including access to information
- cooperative efforts at the national and international level

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* (if passed)) 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 do, however, have a number of concerns about the legislation itself and how it will be effective if passed. We suggest that implementation plans, cooperation within Ontario and across jurisdictions, and adequate funding and staff resources are absolutely necessary for its success. We offer the following comments to support improvement of the proposed legislation.

**1) While we need a legislated framework for managing invasive species, the proposed legislation still seems reactive and does not represent a comprehensive response that includes the prevention of the introduction of invasive species.** Prevention is the most effective method for dealing with invasive species. Experience shows that the costs of eradication, particularly for widespread invasive species once established, can be prohibitive and may have a low probability of success depending on species,

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<sup>3</sup> Environmental Commissioner of Ontario (ECO). Planning Our Landscape. *ECO Annual Report, 2004-05*. Toronto, ON : Environmental Commissioner of Ontario. p. 194. .

<sup>4</sup> Ecojustice (formerly Sierra Legal Defense Fund), *A Legal Strategy to Protect Canada's Ecosystems and Economy from Alien Invasive Species*, March 2004, p. 23.

location, and economic priority. Eradication efforts may themselves also affect native ecosystems. Experience with federal and other invasive species regimes suggests that legislation without guiding principles founded in creating a comprehensive response tends to be weak and problematic.

The legislation should include the goals of invasive species management, preferably those already identified in OISSP including: prevent harmful introductions before they occur, detect and identify invasive species before or immediately after they become established, respond rapidly to invasive species before they become established or spread, and implement innovative management actions and take practical steps to protect against impacts of invasive species.

Although the current Bill purports to having a proactive dimension, any measures to respond to a new threat of an invasive only take effect after the Minister has identified a species as harmful and designated it through a regulation or order. We think this is a significant limitation of the current Bill that should be revised to address prevention more comprehensively, including a revision of how invasives are listed and designated, risk assessments, and implementation planning that includes public and scientific review.

There is little information about how the risk assessments will be conducted beyond the characteristics listed in Section 4(3) including species biological characteristics, harm the species has on the natural environment or is likely to have in the future, dispersal ability, and social or economic impacts of the species. We suggest risk assessment be scientifically-based, with traditional knowledge where available, and focus on: 1) invasive species in North America; 2) native species in North America that may benefit from the warming climates and expand their range; and, 3) known invasive species nationally and internationally. We encourage MNR to include these details in current legislation to support protection of Ontario's biodiversity and commercially important systems.

**2) Preventing invasive species from entering 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's<sup>5</sup> 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. For example, the significance of invasive species in development proposals under Ontario's *Environmental Assessment Act* or the *Canadian Environmental Assessment Act, 2012* is typically narrowly scoped to vegetation controls in infrastructure corridors associated with projects. Whether

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<sup>5</sup> Dr. Justina Ray, Executive Director and Senior Scientist with WCS Canada was a member of this panel.

invasive species are considered in the scope of community-based land use plans or the Land Use Strategy being led by MNR with First Nations under the *Far North Act, 2010* remains to be seen. In practise, land use plans are zoning proposals within an approved planning area designed to facilitate discussions about protection and development opportunities. To our knowledge, none of the approved plans or Terms of Reference include provisions for invasive species or climate change action. While there are opportunities to comment on these planning proposals, independent scientific review is non-existent. Significantly, there are no safeguards in other 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. Finally, we previously provided additional information to MNR on the lack of attention to invasives in the Far North, concerns about climate change and invasive species, and the lack of attention to restoration in our comments on the OISSP discussion paper. With this current legislation, it is not clear how proactive planning for invasive management in the Far North may be prioritized.

**3) Categories of invasive species in current proposal are too narrow.** The current proposal relies on MNR to identify invasive species as being in one of two categories: "significant threat invasive species" and "moderate threat invasive species". Section 4(3) identifies some of the characteristics MNR will consider in assigning invasive species to these categories, including species biological characteristics, harm the species has on the natural environment or is likely to have in the future, dispersal ability, and social or economic impacts of the species. The current Bill could be strengthened by MNR articulating how it will assess invasive species and include the principles of such an approach. For example, the Bill should make clear that invasives will be categorized on the basis of the best available science, application of the precautionary principle, and that the process to list and prioritize species will include independent and transparent scientific review and public input. Taken together, these principles would provide greater confidence in assessing how MNR will determine listing.

We suggest that leaving the listing to the discretion of the Lieutenant Governor in Council, as currently worded, is problematic because it is unclear how that decision will be made in this legislation. We recommend listing be based on the best available science and traditional knowledge where available. Socio-economic factors are important, but should be considered in the government responses to listing, similar to the analogous process under the *Endangered Species Act* (ESA). Finally, as an important precautionary and preventative measure that could be included in this legislation, we recommend that every alien species be treated as potentially invasive unless convincing evidence is provided indicating that it is not (Ecojustice 2004: 19).

**4) Collaboration and coordination should be explicitly addressed.** We commend MNR for collaborating with a number of ministries to develop the OISSP, which represents a comprehensive and thoughtful framework for preventing, responding to and managing invasive species in Ontario. Invasive species move beyond political and management boundaries and cooperation and coordination are important requirements for managing invasive species, as discussed in the OISSP. We expect new invasive species legislation to be supported by invasive species policies, implementation plans, cooperative agreements between ministries and agencies as well as authorities in municipalities,

federal and First Nations governments. As such, Bill 167 could go further to establish mechanisms for coordination and cooperation between ministries, agencies, and other authorities at various levels and explicitly address Ontario's role and interests in cooperation and coordination across ministries and jurisdictions. The Bill could consider creating mandatory compliance and coordination across all Ontario ministries and agencies. In addition, this could support additional resources for MNR to implement and fulfill this role if legislated. We remain concerned that without adequate resources, including staff and funding, implementation of any new legislation will fall short.

**5) Provincial parks and conservation reserves demand more thoughtful approach for freshwater conservation given invasive species.** For provincial parks in particular, the OISSP identified the lack of tools to proactively prevent the introduction of all groups of invasive species, or to initiate a rapid response to these species before they become established. That said, it is not clear in this legislation why provincial parks and conservation reserves are explicitly highlighted as management priorities for "moderate threat invasive species" only (section 8(1(b))). We have a number of concerns with this requirement that are also highlighted in our ongoing comments to MNR as BRAG and in comments to MNR on Whitefeather Forest Dedicated Protected Areas – *Cheemuhnuhcheecheekuhtaykeehn* – Management Planning (*EBR Registry Number: 010-8821*) on October 2, 2013.

First, Ontario's provincial parks do not confer harvesting protection to freshwater species unless they are species at risk. In addition, conservation reserves offer even fewer protection objectives with less emphasis on ecological integrity. Second, most protected area and conservation reserve management boundaries are biased to terrestrial systems and cannot address structural and functional connectivity inherent in aquatic systems. This has significant implications for management of invasives based on these boundaries. For example, invasive species released downstream and outside a park or reserve may still find their way into these systems because of connectivity. In addition, climate change may improve habitat suitability for some species that would be considered invasives as they move north through natural connectivity. Even with regulations focused on intentional or unintentional (e.g., live bait, live food trade, pet trade) introductions in parks and conservation reserves, these management units will still need to fundamentally address the way they manage invasives across their boundaries which may have little ecological relevance. We suggest that no invasive species, regardless of their risk category, should be released in Ontario's parks or conservation reserves. Invasive species that are detected in these management areas should be priorities for eradication and restoration.

**6) The bait industry and current practices are an important source of invasive species, particularly aquatic species and diseases/pathogens.** As mentioned, we are currently providing scientific advice to Ontario as a member of BRAG. We anticipate that the regulations around bait harvest, use, and possession in Ontario, particularly in provincial parks and conservation reserves, will be changing in the near future. It is unclear how the current legislation aligns with the bait policy review process currently being conducted, particularly given the focus on parks and conservation reserves in the current legislation.

We conclude that invasive species legislation in Ontario is needed. However, the current Bill needs to reflect the goals and key action items identified in the OISSP and should be revised to include preventative measures as well as cooperation and coordination across current policies and plans as well as agencies and departments. We remain concerned about the lack of prevention measures in the current Bill and the lack of funding and staff resources for MNR 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,

A handwritten signature in black ink, appearing to read "Cheryl Chetkiewicz". The signature is written in a cursive style with a large initial "C".

Cheryl Chetkiewicz, Ph.D.  
Associate Conservation Scientist