



VISION 2016 – 2020

Conservation Ontario will be the leader in engaging Conservation Authorities in matters of common interest and in shaping effective policy related to Conservation Authorities

Conservation Ontario Council Report

From: Jo-Anne Rzadki, Conservation Ontario

Date: November 24th, 2016

Subject: Conservation Ontario Submission on Regulation Proposal Notice titled “Regulation of invasive species under the Ontario Invasive Species Act, 2015” (EBR# 012-8310) and subsequent Regulatory Decision Notice for invasive species under the *Ontario Invasive Species Act, 2015* (EBR# 012-8310)

Summary

This Report highlights Conservation Ontario coordinated response dated October 6th on Regulation Proposal Notice on the Regulation of invasive species under the Ontario Invasive Species Act, 2015 (EBR# 012-8310). MNR posted a Regulatory decision notice on EBR# 012-8310 shortly after on November 2nd, 2016. This Report also updates activity by CAs and Provincial and Federal governments on the control of Invasive species and specifically Phragmites in Long Point and Rondeau Bay Coastal Marshes.

Recommendation

THAT Conservation Ontario Council endorse the comment letter dated October 6th on the Regulation Proposal Notice titled “Regulation of invasive species under the Ontario Invasive Species Act, 2015” (EBR# 012-8310)

Background

Conservation Ontario engagement and input on Invasive Species Discussion Papers, Legislation and Strategies date back to 2011. At the April 2016 CO Council Meeting, CO Council endorsed letters to Premier Wynne and the Executive Director of the Pest Management Regulatory Agency (PMRA) of Health Canada in support of an MNR application to the PMRA for an emergency use order for aerial and terrestrial application of Roundup Custom in areas infested by Phragmites in the Long Point and Rondeau Bay coastal marshes. Since then, the Long Point and Rondeau Bay Phragmites Control Projects have been approved and information on these projects can be accessed at the Ontario Phragmites Working Group website (see weblink posted below this report). The Nottawasaga Valley Conservation

Authority has also prepared a Phragmites and Invasive Species Action Plan in May 2016 (Weblink is posted below this report).

Current Status

On September 8, 2016, the Ontario Ministry of Natural Resources and Forestry (MNRF) posted a Regulation Proposal Notice titled “Regulation of invasive species under the Ontario Invasive Species Act, 2015” (EBR# 012-8310) to the Environmental Registry for public review and comment. As the EBR states, the Province is proposing a regulation which would classify the 16 species identified on the Conference of Great Lakes and St. Lawrence Governors and Premiers “Least Wanted Aquatic Invasive Species List” and all species in the Channidae family as prohibited under the Invasive Species Act, 2015; and classify Phragmites, Dog Strangling Vine and Japanese Knotweed as restricted species under the Invasive Species Act, 2015. Conservation Ontario coordinated comments which were received from 9 CAs (TRCA, CVC, LSRCA, ERCA, CLOCA, ABCA, LTC and Ganaraska RCA). The attached coordinated letter was submitted to MNRF on October 6th, 2016.

Highlights of Conservation Ontario’s comments include:

- Additional species recommended to be classified as restricted or prohibited including: Sea and Common buckthorn, Russian and Autumn olive, Norway maple, Periwinkle, Exotic Honeysuckle, Spotted and Diffuse Knapweed, Garlic Mustard, Barberry, and Kudzu.
- Conservation Ontario cautions the Province in prescribing actions to control or eradicate the proposed restricted species as the long-term ramifications of some control measures are still unknown.
- As a cautionary note, Glyphosate is listed as one of eleven chemicals in the Ministry of Environment and Climate Change’s Tables of Drinking Water Threats because it can enter surface and groundwater as a result of its application to land and through spills resulting from the improper handling and storage of the herbicide. If herbicides like Glyphosate are approved for use, it is advised that the Province ensures that they are not applied to vulnerable areas where source protection plan policies apply.
- Until such time as there is a safe and effective (and financially affordable) mechanism recommended for the control of Phragmites, any orders by an inspector to force the control, removal or eradication of the species should not be issued.
- Because the proposed restricted species are already widespread across the province, the Province is encouraged to provide more clarification on how to effectively manage these species.
- It is also advised that funding support or compensation be made available as incentive for private landowners and public landowners (eg. Conservation Authorities and municipalities) to control and/or remove these restricted species from their properties.
- Enforcement and inspections should be increased to ensure that prohibited fish species: Grass Carp, Bighead Carp, Silver Carp, Black Carp and Snakehead are sold both dead and eviscerated and by restricting the release or deposit of prohibited species.

On November 2nd, 2016 MNRF posted a Regulation Decision Notice on the EBR for the above referenced posting on Regulation of invasive species under the *Ontario Invasive Species Act, 2015* (EBR# 012-8310) (Weblink posted below this report). Some of the effects of consultation on this decision include:

- *Several submissions made reference to the need for sufficient resources and funding to effectively implement the Act and this regulation. This included recommendations to explore opportunities to increase the roles of municipalities and Conservation Authorities in the management of invasive species.*
- *Revisions have been made to the exemption for the incidental movement of Water Solider and European Water Chestnut to clarify how a person must dispose of these species and to require that reasonable precautions are taken to avoid transporting these species outside of the part of the water body where it is present.*
- *The regulation now provides an exemption from clause 8(1)(b) of the Act for a person who deposits or releases a member of a restricted invasive species outside of a provincial park or conservation reserve if they do so inadvertently in the course of carrying out activities to control or manage the species, or during commercial, agricultural, maintenance or other activities where the purpose of the activity is not to deposit or release of the species.*
- *The regulatory posting sought feedback on the potential application of powers under Section 23 (Invaded Places) and 27 (Minister's actions to control or eradicate invasive species) for restricted species. As a result of feedback received, the regulation does not prescribe these powers for the restricted species. Comments identified the need for additional consultation and policy development prior to recommending that these provisions be prescribed for restricted species.*

Jo-Anne Rzdki (CO) was interviewed by CBC Radio Canada in Sudbury about the Regulation Decision Notice.

Conclusion

Conservation Authorities will be circulated on future opportunities for additional consultation on policy development related to this Act.

Additional Resources (for information only, not required for printing)

[*Ontario Phragmites Working Group website*](#)

[*Phragmites and Invasive Species Action Plan, Nottawasaga Valley Conservation Authority*](#)

[*Regulation Decision Notice for invasive species under the Ontario Invasive Species Act, 2015 \(EBR# 012-8310\)*](#)



Jeremy Downe
Invasive Species Program and Policy Advisor
Ministry of Natural Resources and Forestry
Natural Resources Conservation Policy Branch
Natural Heritage Section
300 Water Street
Peterborough, Ontario K9J 8M5

October 6, 2016

Dear Mr. Downe:

Re: *Regulation of invasive species under the Ontario Invasive Species Act, 2015* (EBR #: 012-8310)

Thank you for the opportunity to provide comments on the *Regulation of invasive species under the Ontario Invasive Species Act, 2015*. Conservation Ontario is the network of Ontario's 36 Conservation Authorities (CAs). These comments are being provided to you as a result of consultation with CA staff who have extensive experience working with invasive species as part of their responsibilities to ensure the conservation, restoration and responsible management of Ontario's water, land and natural habitats. These comments are not intended to limit consideration of comments shared individually by Conservation Authorities.

General Comments

Expansion of Restricted and Prohibited Invasive Species List

The Province is commended for classifying more species to be regulated under the *Ontario Invasive Species Act, 2015*. By considering the precautionary principle, the Province is encouraged to expand both the Restricted and Prohibited lists to include more of the many species with substantial evidence of being invasive before they become further established and widespread across the province. Species recommended to be classified include: Sea and Common buckthorn, Russian and Autumn olive, Norway maple, Periwinkle, Exotic Honeysuckle, Spotted and Diffuse Knapweed, Garlic Mustard, Barberry, and Kudzu.

A key objective of the Act is to prevent new invasive species from arriving and establishing in Ontario. To meet this objective, the Province is advised to be more restrictive on the introduction of new and exotic

species from the landscape industry by determining their potential to be invasive prior to allowing their sale in Ontario. For example, the Common buckthorn (*Rhamnus cathartica*) was introduced to North America as an ornamental shrub and was widely used in gardens and hedgerows. Since its introduction, Common buckthorn has spread aggressively throughout southern Ontario and has invaded a variety of habitats where it restricts other plants from growing. By classifying the Common buckthorn as a restricted species, it would no longer be sold in nurseries and further spread of the species across Ontario can be prevented. It is crucial that the classification of invasive species is driven by the species' ecological implications, and not their economic ones.

Amendments to the *Ontario Invasive Species Act, 2015*

Prohibitions for restricted invasive species as described in section 8 of the Act should be amended to state “*No person shall knowingly...*” This correction will ensure that Conservation Authority staff and the general public are not in contravention of the Act by hiking through a field of restricted species and unknowingly depositing or releasing a member of a restricted species.

While many of the restricted species are very wide spread, it is suggested that the Act be amended to include a provision requiring signage be installed in public areas where prohibited and restricted species are present. Additional signage and educational information on how to minimize the spread of invasive species can improve awareness and reduce the chances of incidental movement and spread of invasive species across the province.

More stringent regulatory control is needed to effectively manage invasive species and prevent the introduction of new invasive species from arriving and establishing in Ontario. Conservation Ontario encourages the province to work with the Government of Canada and Canadian Food Inspection Agency to ensure thorough inspections are conducted of cargo ships entering North American waters to ensure prohibited and restricted species are not present. The Province is encouraged to implement stringent fines under this proposed provincial regulation as an effective deterrent to non-compliance with regulatory provisions on invasive species.

Proposed Restricted species

Conservation Ontario is supportive of classifying Phragmites, Dog Strangling Vine and Japanese Knotweed as restricted species under the *Ontario Invasive Species Act, 2015* and prescribing Section 23 *Declaration of an Invaded Place* and Section 27 *Actions to control or eradicate invasive species* for these three restricted species. However, clearer definitions of “invasive species control area” and “invaded place” referred to in Section 27.1.a.i) and ii), respectively, should be provided for each species based on its level of invasiveness and ecological impact. Clarification of these definitions will allow inspectors to issue orders objectively and ensure consistent enforcement.

Conservation Ontario cautions the Province in prescribing actions to control or eradicate the proposed restricted species as the long-term ramifications of some control measures are still unknown. For example, there are large areas heavily infested with Phragmites. However, there is currently no chemical herbicide registered for use over water for the control of Phragmites. As a result of an MNR application to the Pest Management Regulatory Agency for an emergency use order for aerial and terrestrial application of RoundupCustom (Glyphosate) in areas infested by Phragmites, we are aware Control Projects have been approved for Long Point and Rondeau Bay.

Conservation Ontario comments on the Regulation of invasive species under the Ontario Invasive Species Act, 2015 (Oct 6, 2016)

As a cautionary note, Glyphosate is listed as one of eleven chemicals in the Ministry of Environment and Climate Change's Tables of Drinking Water Threats because it can enter surface and groundwater as a result of its application to land and through spills resulting from the improper handling and storage of the herbicide. Therefore, the Province is encouraged to assess the long-term effects of the application of chemicals and Glyphosate as a measure to control or eradicate invasive species. However, if herbicides like Glyphosate are approved for use, it is advised that the Province ensures that they are not applied to vulnerable areas where source protection plan policies apply. Until such time as there is a safe and effective (and financially affordable) mechanism recommended for the control of Phragmites, any orders by an inspector to force the control, removal or eradication of the species should not be issued.

Because the proposed restricted species are already widespread across the province, the Province is encouraged to provide more clarification on how to effectively manage these species. For example, guidance is needed to determine what situations would warrant Section 27 *Actions to control or eradicate invasive species* to be prescribed. There may be some circumstances where actions to control or eradicate the proposed restricted species may be impractical and very costly for private landowners or municipalities to undertake at their own expense. As a result, it is also advised that funding support or compensation be made available as incentive for private landowners and public landowners (eg. Conservation Authorities and municipalities) to control and/or remove these restricted species from their properties.

Proposed Prohibited species


Conservation Ontario is supportive of classifying the 16 species identified on the Conference of Great Lakes and St. Lawrence Governors and Premiers "Least Wanted Aquatic Invasive Species List" and all species in the family Channidae (Snakeheads) as prohibited under the *Ontario Invasive Species Act, 2015*. However, it is advised that revisions be made to the exemption for the incidental movement of Water Soldier and European Water Chestnut as a result of water-based activities (boating, fishing, hunting, etc.) in areas where the species are already present in Ontario. To prevent further establishment of invasive species across the province, the Regulation should aim to minimize the movement of invasive species within areas where they are already present. As such, the exemption for incidental movement of Water Soldier and European Water Chestnut should be such as the Incidental Catch provision, where the incidental movement of a member of the invasive species would be exempt from the prohibitions on possession and transportation provided immediate measures are taken to destroy the member in a manner that would eliminate the ability of the member to reproduce. By revising this exemption, the incidental movement of Water Soldier and European Water Chestnut will not extend from one waterbody to another even if both waterbodies have the invasive species present and the spread of the invasive species will not affect the entire waterbody.

Consequential amendments

Conservation Ontario is supportive of the Province's efforts to amend the regulatory proposal to prohibit Grass Carp, Bighead Carp, Silver Carp, Black Carp and Snakehead under the *Ontario Invasive Species Act, 2015* from being bought or sold in Ontario unless they are both dead and eviscerated. However, more stringent regulations should be implemented by increasing enforcement and inspections to ensure that these fish species are sold both dead and eviscerated and by restricting the release or deposit of prohibited species.

Thank you for the opportunity to provide comments on the *Regulation of invasive species under the Ontario Invasive Species Act, 2015*. Conservation Authorities play an important role in addressing today's environmental and resource management challenges, which enables Conservation Ontario to be uniquely positioned to provide valuable input into this review process. Conservation Ontario is strongly supportive of prescribing and classifying more invasive species as prohibited or restricted and subject to the restrictions, conditions, prohibitions and measures under the *Ontario Invasive Species Act, 2015*. Should you have any questions about this letter, please contact Jo-Anne Rzađki, at extension 224 or by e-mail at jrzadki@conservationontario.ca.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Rzađki', written in a cursive style.

Jo-Anne Rzađki, MSc
Business Development and Partnerships

c.c. All Conservation Authorities' CAOs

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