



Ontario Federation of Agriculture

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Submission to the

Standing Committee on Social Policy

on the

Invasive Species Act

by the

Ontario Federation of Agriculture

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The Ontario Federation of Agriculture (OFA) is Canada's largest voluntary general farm organization, representing more than 37,000 farm family businesses across Ontario. These farm businesses form the backbone of a robust food system and rural communities with the potential to drive the Ontario economy forward.

The OFA supports the principle behind the proposed *Invasive Species Act*. We fully agree that invasive species threaten biodiversity as native species are at risk of being overwhelmed by invasive species. Invasive species also pose a threat to farmed livestock, poultry and crops. Farmers have a significant stake in this issue. We welcome this opportunity to present Ontario agriculture's perspective on the proposed *Invasive Species Act*.

Nevertheless, we find the broad powers in the proposed Act, along with few, if any, checks on those powers, troublesome. In Ontario's haste to develop ways and means to identify and respond to invasive species, have we lost sight of the need to carefully balance public goals with individual rights?

Although no single statute encompasses the range of actions envisioned in the proposed *Invasive Species Act*, there are statutes, both federal and provincial, that do address aspects related to the intent of this Act. It is unclear to us how these jurisdictional overlaps will be addressed.

The stated purpose of the Federal Plant Protection Act is the "protection of plant life and the agricultural and forestry sectors of the Canadian economy by preventing the importation, exportation and spread of pests by controlling or eradicating pests in Canada".

Ontario's Weed Control Act focusses on the specific weeds, as named in the Noxious Weeds List, that negatively impact agriculture and horticulture. In addition, the Act reduces plant diseases by eliminating disease hosts and reducing health hazards for livestock.

How will the jurisdictional overlaps be addressed? To be truly effective, the Ministry of Natural Resources and Forestry must be in constant communications with federal and provincial ministries and agencies whose current mandate overlaps the intent and purpose of the proposed *Invasive Species Act*. In the absence of a clear definitions of roles and responsibilities in addressing invasive species, we fear farmers may be caught in the middle.

Turning to some of the specific provisions in the proposed *Invasive Species Act*;

Definitions [Section 1]

“harm to the natural environment” includes any adverse effect to biodiversity or ecological processes or to natural resources or their use

The definition is vague. What constitutes “harm to the natural environment”? There is no description of what constitutes an adverse effect or what natural resources and their uses are? The OFA recommends that the definition of “harm to the natural environment” be rewritten to clearly define an adverse effect and natural resources or their use.

“invasive species” means a species that is not native to Ontario, or to a part of Ontario, and,

- a) Is harming the natural environment of Ontario or of a part of Ontario in which it is present, or
- b) Is likely to harm the natural environment of Ontario or of a part of Ontario, regardless of whether it is present in Ontario or in a part of Ontario

It appears that the legislation is only focused on the negative implications to the “natural environment”. However, the OFA believes that these negative implications could extend well beyond and adversely affect a range of human-altered landscapes; agricultural lands and urban areas too. Unchecked impacts on these could be as devastating as the potential impacts on the “natural environment”. The OFA recommends that the definition an “invasive species” be broadened to include human-altered landscapes in addition to the “natural environment”.

Furthermore, few, if any, of the livestock, poultry or crops grown and raised in Ontario are native species. There is no exemption in the Act for farmed livestock, poultry or crops. We should carefully consider all of the implications before introducing any new farmed livestock, poultry or crops. However, neither should they be barred simply because they are not native. The OFA requests that the proposed Act contain a clear statement exempting farmed livestock, poultry or crops.

Similar species [Section 3.(2)]

The legislation proposes to treat members of a species that looks like invasive species, as an invasive species. The determination seems to be solely appearance-based and subjective. There is no indication if contrary evidence is considered, by whom, or if there is any avenue of

appeal. The OFA recommends that the proposed Act require scientific or genetic proof that a suspect species is actually an invasive species. We further recommend that there be an appeal mechanism for suspect species.

Classes of invasive species [Section 4.(2)]

Listed invasive species would fall into one of two classes, “significant threat invasive species” or “moderate threat invasive species”. The proposed *Invasive Species Act* would benefit from clearer language for the determining the characteristics for each classification category, such as replacing significant threat invasive species with prohibited species and moderate threat invasive species with regulated species. The terms “prohibited” and “regulated” are well understood by Ontarians.

Threat considerations [Section 4.(3)]

The risk assessment process is largely unknown making it difficult for us to assess the potential impacts on farmers and their operations. Among our questions are;

- What factors will be considered in a risk assessment?
- Who will conduct the risk assessment?
- Will they be scientific specialists or laypeople?
- Will stakeholders be consulted on the results of risk assessments before regulations are implemented?
- Will there be a mitigation or remediation process prior to regulation?
- Will risk assessments consider technological innovation to reduce the risk of invasive species movements via carriers such as hosts and conveyances?
- How often will risk assessments be reviewed?
- Will risk assessments serve as a bottleneck, unduly delaying or barring farmers from innovative plant technologies, cultivars, etc?

Prohibitions, moderate threat species [Section 8.(1)]

While the prohibitions for “significant threat invasive species” apply to all of Ontario, the prohibitions for “moderate threat invasive species” only apply to provincial parks or conservation reserves. If the basic intent of the proposed *Invasive Species Act* is to check the spread of invasive species, then focusing only on protecting provincial parks or conservation reserves runs the real risk of giving a moderate threat invasive species a foothold on either private or Crown land that would make controlling its future spread impossible. All lands, provincial parks,

conservation reserves Crown or private merit protection against an invasive species becoming established. The OFA recommends that the restricted protection afforded to provincial parks or conservation reserves be dropped, making the “moderate threat invasive species” prohibitions apply to all of Ontario.

Prevention and response plans [Section 13, (1) & (2)]

While we are encouraged by the provisions outlining prevention and response plans, we recommend these plans include prior consultations with agriculture associations and other stakeholder groups to ensure that proposed response measures do not threaten existing activities.

Surveys for the purposes of detection [Section 16]

The Act empowers inspectors to conduct surveys to determine if any invasive species, listed or not, is present. In the course of conducting surveys, inspectors may enter any land, at any reasonable time. Although “reasonable time” is not defined, entry onto land does not extend to entry into a “building or structure, including a building or part of a building that is being used as a dwelling”.

Regrettably, farm biosecurity is not mentioned. Farm biosecurity involves strictly controlling nonessential human access to farm fields as well as livestock and poultry barns as a means to minimize the potential for crops or livestock to be exposed to diseases, blights, etc. while we do not expect that farm biosecurity measures to be specifically cited in the proposed *Invasive Species Act*, we do expect the Ministry of Natural Resources and Forestry to commit to training those individuals responsible for enforcing the Act to be trained in farm biosecurity measures, and be required to comply with them, as with other enforcement/inspection personnel.

In addition, section 16 repeatedly uses the phrase, “any land”. Does this include lands neighbouring the specific property being inspected? If so, not only must farm biosecurity be respected, but also the inspectors and/or enforcement personnel must be aware of the safety risks associated with entry onto farm properties; the presence of large livestock and livestock guard dogs as well as the uneven landscape of farm fields. Inspectors and/or enforcement personnel should seek permission from the property owner before entry, so they can learn of any potential safety risks, as well as informing that owner of their presence.

Compensation [Section 29]

The legislation does provide for compensation for losses arising from actions taken with respect to invasive species. We welcome the Ministry's intent to provide compensation. The proposed *Invasive Species Act* is vague on how and when compensation would be provided. The OFA recommends that the compensation provisions be clarified to include when and how.

Enforcement officers [Section 31]

Conservation Officers, appointed under the Fish and Wildlife Conservation Act and Park Wardens, under the Provincial Parks and Conservation Reserves Act, 2006, are empowered to enforce this Act. Officers acting under the Invasive Species Act are required to produce identification upon request. There is no mention in the legislation of any certification or training for these officers, to enable them discern that what they're looking at is truly an invasive species. The OFA recommends that officers who will be enforcing this Act be provided with training so they can fulfil these added responsibilities.

Warrantless searches [Section 32 (2)]

Section 32 (2) provides for warrantless searches. The OFA views these provisions, as we have in other statutes, as opportunities for abuse of this power. The OFA recommends that this section be amended by adding provisions that limitations on the exercise of warrantless searches.

Forfeiture of dead animals, etc. [Section 35 (10)]

This subsection seems to conflict with the existing dead stock disposal requirements as set out in either the Nutrient Management Act for on-farm disposal, or in the Food Safety and Quality Act, for off-farm disposal. The OFA recommends that these provisions be reviewed to ensure that there is no conflict between section 35 (10) and either the Nutrient Management Act or in the Food Safety and Quality Act.

Penalties [Section 44]

Penalties proposed under the Act are substantial, given that the intent is they serve as a deterrent. First offence for a corporation is up to \$1,000,000. For an individual, it is up to \$250,000 or up to 1 year in jail, or both. In addition, the event one is convicted and the offence involves multiple numbers or invasive species, then the penalties are multiplied by the number of invasive species involved.



Many family farms are incorporated either to facilitate intergenerational transfers of the farm business, or for tax purposes or both. We suggest that the proposed Act treat all registered farm businesses, either incorporated or not, as an individual, should penalties need be levied.

Service of notices [Section 49 (5)]

There is no acknowledgement here of normal business hours, evening, weekends or holidays. Furthermore, during peak planting and harvesting times, farmers are often working around the clock, with no thought of checking for messages, faxes, etc. Deemed receipt must account for these realities.

On behalf of our 37,000 farm business members and supporters, I thank you for the opportunity to express our thoughts on Ontario's proposed *Invasive Species Act*.