



New York Farm Bureau • 159 Wolf Road P.O. Box 5330 • Albany, New York 12205 • (518) 436-8495 Fax: (518) 431-5656

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New York State Department of Environmental Conservation
Office of Invasive Species Coordination
Fifth Floor
625 Broadway
Albany, N.Y. 12233
Invasivesreport@gw.dec.state.ny.us

RE: A Regulatory System for Non-Native Species

New York Farm Bureau, the state's largest general farm organization representing almost 30,000 members, appreciates the opportunity to provide comments on the draft report of *A Regulatory System for Non-Native Species*. The report describes a proposed four-tier regulatory system for preventing the importation and/or release of non-native animal and plant species in New York. The four-tier system proposed must include a procedure for the review of a non-native species that is not on a prohibited, regulated, or unregulated list before the use, distribution or release of such non-native species. Non-native species pose a potential harm to the agricultural community, but can also provide economic and environmental opportunities for the growth and improvement of the industry. Many commodities within agriculture including nurseries, greenhouses, organic, livestock, and many others will be affected by the proposed system and it is crucial that an appropriate and efficient system is created.

NYFB has been able to actively participate throughout the development of the proposed process and has provided input through many stages of the progression. Our organization has held a role on the 'four-tier team task force' that developed and created the required system for New York non-natives. The proposed system evaluates the invasiveness of a foreign species by first evaluating it through a scientific analysis followed by an evaluation of the socio-economic contributions that the species provides. This data will then be presented to the New York Invasive Species Council for a determination of ranking the species as prohibited, regulated, or unregulated. It will then be put forward through the rulemaking process for public comments and review. These comments will be considered and evaluated by the Council prior to completion of the rulemaking.

This system has progressed tremendously, however there continue to be aspects that need to be evaluated and amended prior to the draft report moving forward. ECL § 9-1705 established the New York Invasive Species Council and the requirement for a “report, produced in consultation with the [invasive species] advisory committee, recommending a four-tier system for non-native animal and plant species.” This system was to define ‘Invasive Species’ as “nonnative to the ecosystem under consideration; and whose introduction causes or is likely to cause economic or environmental harm or harm to human health. For the purposes of this paragraph, the harm must significantly outweigh any benefits.”

In developing the process for this system, the statement that “...the harm must significantly outweigh any benefits” has been crucial in establishing methodologies that accurately consider both the harm and benefits that are caused by an invasive species. While the scientific process had been developed to evaluate and determine the environmental harm that is caused by a species, the socio-economic process was created to contrast the possible harm and benefits caused by that same species.

The evaluation tool used to analyze the socio-economic conditions caused by a species includes an evaluation based on both the positive and negative socio-economic contributors on the economy and within society. The scientific evaluation tool currently only determines negative values that are caused in the environment by the species in question. This creates a system that is unbalanced and incomplete in evaluations that are provided on the species.

The processes that are used need to be equal in their evaluations of the species allowing for an opportunity for the results to demonstrate that the harm *significantly* outweighs all benefits. This process currently proposed does not provide for an equitable evaluation.

We support the socio-economic process containing both positives and negatives. We feel this appropriately demonstrates the impact that an invasive species could have on the environment both socially and economically. This is important in such aspects as human health where it is important to acknowledge both the benefits that are created by a species and the harm that poses a risk to a society. This is also important for agriculture in determining the economic benefit or harm that an invasive species could have on the agricultural community. While certain species could provide an economic accelerator for the industry, there could be another species that has the potential to damage farms or become costly to manage or eliminate.

This concept of positive and negative evaluations should be applied to the scientific evaluation as well. While the scientific process was initially designed to demonstrate the invasiveness of a species, it is crucial, given the statute language of Title 17, that this

process balances equally with the socio-economic so as to create the potential for complete evaluation of a species. Appropriate balance must be applied if a species is going to be able to demonstrate that its benefits truly do outweigh any potential harm.

If there are positive attributes that a species could add to the environment, this benefit needs to be reevaluated and applied in the scientific process. A species could have a positive ecological impact on the environment in contrast to the purely negative evaluations that are currently considered by the process. Benefits to soil, land structure, community composition, and many other aspects are not evaluated throughout this process in either the scientific or socio-economic evaluation. These benefits need to be accounted for if the positive contributors are going to be able to clearly and concisely outweigh the harm that is produced by an invasive species.

Without this balance of positives and negatives in both evaluations, a system is created that provides for a significantly higher ratio of negatives, making it extremely difficult for certain species to gain enough positives to be less regulated. This is demonstrated in many ornamental species where the scientific harm makes the species incredibly high on the evaluation creating a system that will not give ability for a full beneficial analysis to outweigh or change the species to be moved from such categories of prohibited to regulated or even potentially unregulated.

We are very concerned that under the current proposal the Advisory Committee is not required to be consulted in conjunction with the Council to evaluate the listing of an invasive species prior to the rulemaking process. The report states “Step 4 – Regulatory Determination – The assessment team would present its proposed lists to the Council. The *final* determination regarding the category to which a previously unlisted species is assigned would be made by the Council. In doing so the Council may consult with the Advisory Committee as needed.”

We recommend that the Advisory Committee must be consulted by the Council to give a final determination regarding the category of an unlisted species. The Advisory Committee is comprised of 25 organizations that are stakeholders in the evaluation of invasive species in New York. These representatives have expertise in the field and are able to provide specific information on the accuracy and completion of an evaluation of a species. This can be crucial in identifying potential discrepancies prior to promulgating the status of a species through the rulemaking process.

The draft report provided a scientific and socio-economic evaluation of 5 non-native species to illustrate how the system evaluates and ranks the species. While we recognize and support that the work completed on the *Invasiveness Ranking Forms* as a complete analysis, it is important to have acknowledged that “the socio-economic assessments have not been performed, the proposed rankings of these species have not been considered by the Council, and no final determination has been made with respect to

the listing of the species.” (*Application of the Proposed Four-Tier System*). The draft report provides socio-economic assessments for Autumn Olive, Japanese Barberry, Timothy, Daylily, and Chinese Mystery Snail. These socio-economic analysis’ are incomplete and further evaluations on the species should be done.

When reviewing the socio-economic analysis for Timothy (*Phleum pratense*) it can be seen that the research can be improved and will need to be re-evaluated prior to presenting to the Council and furthermore, the rulemaking process. As an analysis, Timothy should not have received a negative 10 for causing human health with the explanation being a common allergy of hay fever. Timothy is not a common cause of hay fever, as it is not included as an allergen that accelerates that condition. Furthermore, the reaction that can potentially be caused by an allergy does not create a severe human health consideration allocating the need for such a high negative ranking. It is important that these socio-economic assessments are re-evaluated prior to moving forward with further regulations.

Given the number of non-native species, we support the prioritization of species for full assessments. The assessment methodology (provided in Appendix I), contains a three step process to identify non-native species for screening and prioritizing those species for detailed risk assessment. This is important in establishing guidelines to evaluating non-native species that are a potential threat to our current environment.

NYFB strongly supports these regulations moving forward jointly under both the supervision of the Department of Environmental Conservation and the Department of Agriculture and Markets. Furthermore, it is important that these agencies continue to have existing authority and jurisdiction relating to specific aspects of invasive species control. Currently the Department of Agriculture and Markets has extensive survey and detection programs for forest and agricultural pests, inspects and regulates nurseries, retail establishments, and shipping of plant materials. This has been crucial in understanding the agricultural communities needs for threats and benefits of invasive species.

It is important that geographical considerations were evaluated throughout this process. (*Additional Considerations, Geography*) New York State varies physically, ecologically, and economically throughout many diverse regions. It had been strongly considered and attempted to create a system that provided for variations in regulations under those circumstances. However, despite differentiations across the state it is imperative that lists that are created are not separate from a state list of noxious weeds or invasive species. This would create a system of complex regulations that would severely complicate compliance and enforcement.

In conjunction with acknowledging the geographic diversity of New York State, it has been acknowledged that sterile cultivar varieties could provide a viable alternative to

invasive species of plants or animals. (*Additional Considerations, Biology*). Research is underway to develop 100 percent sterile cultivars for selected species, including but not limited to hybridizations, genetic engineering, and trait selective breeding. We support the continued establishment of a protocol and criteria for assessing the invasiveness of cultivars independent of the species to which they belong. Individuals with the appropriate expertise should be consulted and provide technical evaluations.

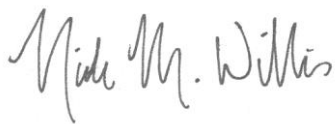
NYFB also supports the accommodation of the business community with the proposed regulatory system. (*Additional Considerations, Business*) Considerations must be given to growers and investors based on biological and financial impacts that will be caused by the prohibition of a species. It is important to have a suitable grace period that allows for adaptation within the business realm to accommodate for changes that are mandated in future regulations.

Much of this draft report has progressed well to establish a thorough and technical process for evaluating an invasive species in New York. Prior to releasing the final report it is important to evaluate the technicalities and modify the process to provide for a more efficient and accurate methodology.

New York Farm Bureau values the dedication that has gone into the development of this report and the continued improvements that will better this system.

Again, we appreciate your time and consideration of these comments by your office. Please do not hesitate to contact our offices with any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Nicole M. Willis".

Nicole Willis
Assistant Director of Public Policy