

CT Invasive Plants Council
Tuesday, October 13, 2009
2 pm, Valley Laboratory
Windsor, CT

Council members present: Mary Musgrave, Les Mehrhoff, David Sutherland, Philip Prelli, Lou Magnarelli, Bill Hyatt, Paul Larson, Tom McGowan

Others present: Donna Ellis, Logan Senack, Nancy Murray, Dick Shaffer

1. Musgrave called the meeting to order at 2:03 pm.

2. The minutes for the 9/8/09 meeting were reviewed. Prelli moved (second: Larson) to approve the minutes. **The Council decided to approve the minutes as submitted.**

Items 3 and 4 were deferred until Mehrhoff arrived.

Item 5 was deferred until McGowan arrived.

6. Chairman succession and nominating committee (Sutherland, Larson)

The nominating committee (Sutherland and Larson) has not identified a person to serve as chairman for the next cycle. They hope to have suggestions for the November meeting.

Tom McGowan arrived at 2:05 pm.

5. Invasive plants and boat inspections (McGowan)*

McGowan shared his correspondence with Senator Roraback's office regarding the enforcement of Sect. 15-180 of the CT General Statutes (transport of vegetation on boats and boat trailers). The Office of Legislative Research (OLR) prepared a summary report for Roraback regarding enforcement of the invasive plant law (P. Frisman, Oct. 8, 2009*). The report noted that there would need to be a provision in the state law that allows state troopers to enforce the invasive plant law—currently enforcement authority resides with the Commissioner of the Department of Environmental Protection (DEP). McGowan stated that further defining this enforcement authority would be a sensible and necessary step to the law actually being enforceable.

Hyatt noted that the OLR report actually did not mention Sect. 15-180. Currently, this section of the law is enforceable by DEP but is listed as a misdemeanor, not an infraction, requiring both the offender and the officer to appear in court. Sect. 15-180 would need to be added to the list of infractions.

Sutherland clarified that the DEP Commissioner would not have to actually give away authority for enforcement of this section—other law enforcement officers such as local/state police could share enforcement. The group discussed what would be needed to have the Commissioner share authority with local officers and whether an actual legislative change would be needed. It was unclear from the OLR report whether the DEP Commissioner can give the authority to local officials without a change in the state law. Prelli noted that the OLR report is not meant to be

taken as a definitive legal opinion and asked to make sure that other legal opinions are sought before acting, especially opinions from the Legislative Commissioner's Office (LCO) and DEP's legal staff. Prelli also expressed concern that giving blanket authority to constables/local officers could be problematic, especially since most officers will not have any specialized knowledge of invasive plants.

McGowan requested that the Council encourage the DEP Commissioner to find proper additional personnel to enforce the invasive plant law, especially as it relates to boats. McGowan discussed the best way to achieve actual enforcement and the possibility of using Lake Authority personnel under the authority of resident state troopers to additionally enforce the law.

The group discussed the benefits and potential problems if the misdemeanor for violation of Sect. 15-180 became an infraction. Prelli noted that if Sect. 15-180 became an infraction, there might be no escalation of fines whether the person was fined once or several times.

Hyatt noted that the benefits of an enforceable invasive plant boating law would extend beyond Lake Waramaug and could add to preventative measures at other lakes in the area such as Candlewood Lake and Bantam Lake.

Les Mehrhoff arrived at 2:35 pm.

Hyatt will research the process of changing a misdemeanor to an infraction and find out what would be required to have the DEP Commissioner delegate the necessary authority for enforcement of the law and will share his findings with the Council at the November meeting. At present Sect. 22a-381d is not enforceable, but DEP is still looking at developing a method for civil enforcement. A violation of Sect. 22a-381d is already listed with a \$50 fine in the schedule of infractions. Magnarelli reminded the group that right now CAES has no authority whatsoever to enforce the law, although they conduct inspections in garden centers and nurseries. Prelli indicated that the Department of Agriculture (DOAG) could inspect pet shops. If banned species are found, DOAG could do a follow-up inspection to make sure the banned invasive plants were removed.

3. Possible changes to CT list of invasive and potentially invasive plants (Mehrhoff, all)*

Mehrhoff re-distributed the list of his proposed species for discussion*. He also distributed a chart showing the county distributions of the five species he would like the Council to discuss moving from potentially invasive to invasive*. The distribution data for the five species came only from the Invasive Plant Atlas of New England (IPANE) database and herbarium specimens and includes no anecdotal reports. Mehrhoff added that many of the species are even more common than the current records show, but some species may be so widespread that IPANE volunteers may be failing to notice them.

The group discussed the listing process and addressed concerns that there was not enough information to make decisions on the status changes to some species. Mehrhoff reminded the group that there is an established 9-point criteria that must be met for each species to be listed as invasive. The group discussed the list and how best to acquire more information on each species

before making decisions. Musgrave reminded the group that the Council has relied on Mehrhoff to prepare the initial species list since the beginning, and the Council has always made its recommendations based on Mehrhoff's list.

Since Mehrhoff does not have the time available to prepare extensive reports for each plant, the group asked Senack to prepare further detailed information for species 6-9 on Mehrhoff's list and information in brief on species 1-5 for the next meeting. Mehrhoff volunteered to help Senack with the reports and suggested that the Council take a field trip to see some of the invasives in CT.

Mehrhoff also explained his suggestions that the Council discuss dropping some plants from the invasive plant list:

Elaeagnus angustifolia (Russian olive) is not found outside of cultivation in CT based on Mehrhoff's experience and observations. Mehrhoff notes that there is a high level of confusion between Russian olive and autumn olive (*Elaeagnus umbellata*). According to Larson, the nursery industry took both species out of the trade around 15 years ago.

Glyceria maxima (reed mannagrass) was reported at a single location in Massachusetts. Mehrhoff has been trying to track down the specimen, which was sent to the UConn Herbarium, but was unable to find it. Mehrhoff followed up with a duplicate specimen sent to a Canadian herbarium and has heard from the botanists there that the specimen was incorrectly identified and is not *Glyceria maxima*. This means there are no recorded occurrences of the species in any state in New England in the IPANE database or the UConn Herbarium.

Rosa rugosa (rugosa rose): Mehrhoff suggested the Council discuss *Rosa rugosa* because it is invasive, but only along the immediate coast of Connecticut. Mehrhoff asked the Council to discuss this unique distribution issue and determine if the Council can restrict the use of a plant in only a specific area, like coastlines.

Additionally, Mehrhoff discussed a request to Dave Goodwin that the Council recommend removing the ban on *Tussilago farfara* (coltsfoot) because it is used in medicinal gardens. Mehrhoff stated that he feels this is not a good reason to take the species off the list, and wants to know more about the dispersal mechanisms and other traits of the species, especially whether or not the species will persist in forest clearings.

Mehrhoff asked the Council members to review the full list of criteria and reminded everyone he is only discussing changes to the potentially invasive/invasive plant list, not the list of banned plants.

The Council decided to move discussion on the remainder of Mehrhoff's species list to a later meeting so that the first part (species 1 through 9) could be discussed in more detail in November. The Council also decided to move the nomenclatural issue discussion to a later meeting.

7. Musgrave: Annual Report

Musgrave updated the group on the progress of the Annual Report, which is due in December. **The Council decided to include a report on the Grants to Municipalities Program** despite its cancellation, to highlight the response from the municipalities and the work that was done prior to the program's end. Hyatt will prepare the report and a summary of the Grants to Municipalities program for the Annual Report. DEP will also provide a summary of the invasive activities it has been working on, including the *Hydrilla* project and Logan Senack's work. CAES and DOAG will provide updates on training and inspections. The major accomplishments will also be highlighted in the Executive Summary, including the CAES training session for DOAG staff.

8. Other old or new business:

Murray mentioned that the Council may want to discuss Connecticut procedures for importing invasive plants like *Elodea* for research in high schools and at the University of Connecticut. Murray has worked with individuals who wanted to import material from within the United States for research projects. Hyatt noted that Sect. 26-55 covers the importation of all taxa except plants.

9. The next meeting is scheduled for November 12, from 2-4 pm.

November 12 is a Thursday and not a Tuesday as reported on the 10/13 agenda.

10. Sutherland moved (second: Larson) to adjourn the meeting. The Council decided to adjourn at 4:16 pm.



OLR RESEARCH REPORT

October 8, 2009

2009-R-0360

ENFORCEMENT OF THE INVASIVE PLANT LAW

For: Honorable Andrew W. Roraback

By: Paul Frisman, Principal Analyst

You asked if local law enforcement officials can enforce the invasive plant law. You specifically asked if they can prevent people from transporting invasive plants between inland water bodies. The Office of Legislative Research is not authorized to issue legal opinions and this should not be considered one.

SUMMARY

Local law enforcement officials do not have explicit authority to enforce the invasive plant law as it pertains to boaters who carry invasive plants between state water bodies; however, the Department of Environmental Protection (DEP) commissioner does, and she may delegate this authority as she deems necessary. The law would have to be changed to give local law enforcement officials the authority to enforce the law on their own initiative.

INVASIVE PLANT LAW

The law prohibits anyone from moving or distributing, except for research, eradication, or educational purposes, any of 80 named invasive plants, or their reproductive parts. Violators are subject to a fine of up to \$100 per plant (CGS § 22a-381d, as amended by PA 09-52). This prohibition applies to people who fail to clean these plants, or fragments of them, from their boats or boat trailers, and who may thus inadvertently carry the plants from one body of water to another.

ENFORCEMENT OF THE LAW

State Enforcement Authority

By law, the DEP and agriculture commissioners and the Connecticut Agricultural Experiment Station director can enforce the invasive plant statutes.

The DEP commissioner obtains her authority under CGS § 22a-2, which gives DEP jurisdiction over all matters relating to the preservation of the state's air, water, and other natural resources; CGS § 22a-5, which gives the commissioner all powers necessary to carry out state environmental policies; and CGS § 22a-6, which allows her to (1) initiate and receive complaints for actual and suspected violations of, and (2) enforce, statutes, regulations, permits, and orders she administers, issues, or adopts. **Although the commissioner does not have specific power to delegate enforcement of the invasive plant laws, as she does for other laws under CGS § 22a-2a, the broad authority afforded her by CGS 22a-5 would allow her to delegate enforcement of the invasive plant laws as she sees fit.**

We were not able to speak with DEP law enforcement officials about enforcement of the invasive plant law in time for this report, but will provide you any information we receive from them as soon as we get it.

The agriculture commissioner and experiment station director may enforce the invasive plant law in specific circumstances. CGS §§ 22-84 and 22-344 (e), as amended by PA 09-52, respectively authorize the (1) director to inspect nurseries and nursery stock and (2) commissioner to inspect pet shops, for violations of the invasive plant laws. **The act does not address boat and trailer inspections, and spokesmen for the experiment station and the agriculture department state that they do not conduct such inspections.**

Local Enforcement Authority

CGS § 15-154 (a) explicitly authorizes harbor masters and deputy harbor masters; conservation officers and special conservation officers; state, municipal, and special police officers; lake patrolmen; and town marine officers certified for marine police duty to enforce the provisions of the state's boating laws (CGS Chapter 268) and water pollution control laws (CGS Chapter 446k). However, it does not explicitly authorize them to enforce the invasive plant laws (included in CGS Chapter 446i.)

The statute goes on to say that these officers “when engaged in the enforcement of this chapter and chapter 446k...have the authority to stop and board any vessel which is under way or which is moored on the waters of this state for the purposes of” among other things “searching when such officer has probable cause to believe that any provision of any law...relating to boating or water pollution has been violated” (CGS § 15-154 (b)).

Although this provision seems to allow these officers to enforce any law relating to boating, which could include the invasive plant law, it is not clear if this provision can be so interpreted. For one thing, it qualifies this enforcement power to searches conducted while enforcing the boating laws and chapter 446k of the statutes, not chapter 446i. It also limits searches to cases where probable cause exists and to boats under way or moored, and does not refer to boats that have been removed from the water.

Another law specifying the powers and duties of conservation officers and patrolmen enumerates a number of statutes they can enforce, but does not include chapter 446i or the invasive plant statutes (CGS § 26-6).

Because of the lack of explicit statutory authority and the ambiguity of the statute, the legislature might want to amend the law to clarify that these law enforcement officials have the authority to enforce the invasive plant laws at and between inland water bodies.

PF:ts

Comments on the Connecticut list of Invasive and Potentially Invasive Plants

Les Mehrhoff

14 APR 2009 (rev. 8 SEP 2009)

Raise from Potentially Invasive to Invasive:

<i>Ampelopsis brevipedunculata</i>	Porcelainberry	Vitaceae
<i>Bromus tectorum</i>	Drooping brome-grass	Poaceae
<i>Froelichia gracilis</i>	Slender snake cotton	Amaranthaceae
<i>Polygonum cespitosum</i>	Bristled knotweed	Polygonaceae
<i>Rubus phoenicolasias</i>	Wineberry	Rosaceae

Drop??:

<i>Elaeagnus angustifolia</i>	Russian olive	Elaeagnaceae
(does not usually escape; similarity; common name problem)		
<i>Glyceria maxima</i>	Reed manna grass	Poaceae
(voucher specimen at CONN can't be located. Duplicate of this has been tentatively Identified by grass specialist from Canada, Stephen Darbyshire, as hybrid.)		
<i>Rosa rugosa</i>	Rugosa rose	Rosaceae
(problem only near the coast)		

Keep:

<i>Tussilago farfara</i>	Coltsfoot	Asteraceae
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Add as Potentially Invasive??:

<i>Glossostigma cleistanthum</i>	Mudmat	Scrophulariaceae
<i>Oplismenus hirtellus</i>		Poaceae
subsp. <i>undulatifolius</i>	Wavyleaf basket grass	
<i>Phellodendron amurense s. l.</i>	Amur cork tree	Rutaceae
<i>Pyrus calleryana</i>	Callery pear; Bradford Pear	Rosaceae

Questions on distribution and/or status in CT:

<i>Actinidia arguta</i>	Hardy kiwi, Tara vine	Actinidiaceae
<i>Akebia quinata</i>	Fiveleaved akebia, Chocolate vine	Lardizabalaceae
<i>Miscanthus sacchariflorus</i>	Amur silvergrass	Poaceae
<i>Rhodotypos scandens</i>	Jetbead	Rosaceae
<i>Symplocos paniculata</i>	Sapphire-berry	Symplocaceae
<i>Syringa reticulata</i>	Japanese tree lilac	Oleaceae

Nomenclature issue – do we need a policy about our nomenclatural standard?:

Polygonum vs. *Persicaria*, *Fallopia*

Glossostigma diandrum vs. *G. cleistanthum*

Common name use problem:

Star of Bethlehem (*Onithogalum umbellatum* vs. *Ornithogalum* 'Bethlehem')

Porcelainberry

5/15

Ampelopsis brevipedunculata (Syn.: *Ampelopsis heterophylla*)

FA	5	TO	2
LI	2		
NH	3		
NL	3		

Cheatgrass

8/30

Bromus tectorum

FA	5	NH	6
HA	5	NL	6
LI	3	TO	2
MI	2	WI	1

Slender-leaved Snake Cotton

8/25

Froelichia gracilis

FA	4	NH	8
HA	3	NL	2
LI	1	TO	3
MI	2	WI	2

Oriental lady's thumb

8/44

Polygonum cespitosum (Syn.: *Persicaria longiseta*)

FA	9	NH	4
HA	7	NL	2
LI	4	TO	6
MI	2	WI	10

Wineberry

7/40

Rubus phoenicolasias

FA	9	NH	8
HA	6	NL	6
LI	3	TO	2
MI	6		