

Legal Requirements for Invasive Aquatic Plant Control and Management Projects

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Table of contents

Introduction	<u>2</u>
Creating a project proposal	<u>2</u>
Checklist for your project proposal.....	<u>2</u>
Best practices for your management project.....	<u>3</u>
Authorizations Checklist.....	<u>3</u>
Laws relating to invasive species control projects	<u>5</u>
Federal Acts	<u>5</u>
<i>Fisheries Act</i>	<u>5</u>
<i>Species at Risk Act</i>	<u>7</u>
<i>Pest Control Products Act</i>	<u>8</u>
<i>Migratory Birds Convention Act</i>	<u>8</u>
Provincial Acts	<u>9</u>
<i>Invasive Species Act</i>	<u>9</u>
<i>Public Lands Act</i>	<u>9</u>
<i>Endangered Species Act</i>	<u>10</u>
<i>Pesticides Act</i>	<u>11</u>
Other Legislation	<u>11</u>
<i>Municipal by-laws</i>	<u>11</u>
<i>Example project</i>	<u>11</u>
References	<u>13</u>
Appendix: Additional resources	<u>15</u>

Introduction

Laws and regulations can seem intimidating, complicated, or overwhelming, and this can hinder action. The intent of this document is to provide an easy-to-understand summary of the laws and regulations surrounding invasive species control on lakes and waterfront. Legislation may be revised over time or with changes in government, but this document deals with legislation as of the time of this writing.

Specifically, this document deals with “authorizations” under different acts. An authorization is any kind of permission that may be required by law to carry out a project under a piece of legislation. They are an approval from some level of government to go ahead with a project, provided you follow a set of rules or conditions laid out in the authorization.

Authorizations are usually required when a project has the potential to contravene a piece of legislation but may be able to proceed with approval from the responsible ministry, provided certain conditions are followed. Projects that meet the legal threshold for authorization will need to be reviewed before an authorization is issued. For example, if a project has the potential to destroy fish habitat or kill fish it would contravene the *Fisheries Act*. Fisheries and Oceans Canada (DFO) will need to review it and consider whether they can allow this project to go ahead with certain conditions or deny approval.

Authorizations can range from a simple email confirming you can go ahead (review of a project may conclude that no authorization is needed), to paperwork that must be approved by the responsible government agency. In any case, you will need to have a reasonably detailed project plan prepared when you are ready to seek screening for an authorization, so that the responsible government agency can review the details.

This document will help you navigate the legislation that may affect your project. Some of the details will specifically focus on the removal of invasive phragmites (common reed), as the concern over this invasive plant is what prompted the research for the document.

Creating a project proposal

Before you apply for any authorizations, you will need to have your invasive species management project fleshed out. For most authorizations, the first step is to contact the appropriate government agency and submit your project information for review. Government agencies will want a detailed description and outline of your project when they review it, so that they can advise you on how to proceed. You may not need every detail of your project for a given application, and you may be asked to fill out information about it on a form. Below is a checklist of basic project information you should have on hand when submitting requests for authorization:

Checklist for your project proposal

1. Authorization checklist (see page 3)
2. Project proposal information
 - a. What is the purpose of the project and why is it important?

- b. Who will be involved/leading?
 - c. When will the project take place?
 - d. Where will the project take place, and what is its scope (i.e. anticipated area/volume of plants controlled?)
 - e. What methods will you use?
 - f. How will you dispose of invasive plant material?
3. Additional information required in support of an authorization (i.e., studies, documents, photos etc.) **See Appendix of this document**
- a. Information required before submission.

Best practices for your management project

You will need to research the appropriate management practices to carry out your project. There are a variety of methods for controlling invasive species, but you want to choose based on your means (budget, time, participants etc.).

Familiarizing yourself with management practices for a particular invasive plant, and coming up with a good management plan is important for a few key reasons:

1. You will be more successful controlling invasive plants.
2. It will help you avoid damaging the environment and avoid spreading invasive species.
3. Showing you have a plan based on established best management practices may improve your chances of getting a permit.

A good resource to consult on best management practices is the Ontario Invasive Plant Council's series on this subject, which can be found here: <https://www.ontarioinvasiveplants.ca/resources/best-management-practices/>. For species not found on this site, you will need to do further research.

One thing to keep in mind: projects which are smaller in scale and have simpler methods encounter fewer regulatory issues. Links to additional resources that can help you plan your project can be found in the Appendix.

Authorization Checklist

The following checklist should help you determine which legislation applies to your project. You can use this checklist when coming up with your own project. A "yes" means it applies a "no" means, it isn't applicable. If you answered yes, review that section, and determine if you need a project review. If you're not sure, you may need to review the legislation or conduct some research. **Note, some acts may not require an authorization per se, but you still need to follow the conditions set out in the**

legislation at all times when carrying out a project. As such it is best to double check the rules both before and after you create your proposal, just to be sure none of your plans could affect the legislation.

Act	Question	Yes/No	What is required of you?
Pesticides Act, Pest Control Products Act	Are you using pesticides?		
Fisheries Act	Are you doing work in water?		
Species At Risk Act	Are you doing work on Federal Crown Lands or waterways OR are federally listed at risk fish or molluscs present?		
Endangered Species Act	Are there species at risk and/or their habitat near the location?		
Public Lands Act	Are you conducting work on Ontario Crown Lands or Waterways?		
Invasive Species Act	See section	Yes	
Migratory Birds Convention Act	Are you working in areas where there are migratory birds or their nests?		

Laws relating to invasive species control projects.

The summary below is based on Table 8 from Nichols (2020), which can be accessed in the references section of this document.

Act	Jurisdiction	Ministry
<i>Invasive Species Act</i>	Ontario	Natural Resources and Forestry
<i>Public Lands Act</i>	Ontario	Natural Resources and Forestry
<i>Endangered Species Act</i>	Ontario	Environment, Conservation and Parks
<i>Pest Control Products Act</i>	Federal	Pest Management Regulatory Agency
<i>Pesticides Act</i>	Ontario	Environment, Conservation and Parks
<i>Species At Risk Act</i>	Federal	Environment & Climate Change Canada
<i>Fisheries Act</i>	Federal	Fisheries & Oceans Canada
<i>Migratory Birds Convention Act</i>	Federal	Environment & Climate Change Canada

Many of the acts here consider authorizations for projects on a case-by-case basis, so even with the summary of the legislation provided, it may be valuable to reach out to the responsible ministries if you have questions about the rules.

Federal Acts

Fisheries Act

When do you need an authorization?

The *Fisheries Act* is perhaps the most central piece of legislation you will encounter when working around water. Fisheries are under the jurisdiction of the Federal government, and activities that can impact individual fish and fish habitat require an authorization. For invasive species management projects in water, it is quite explicit that you will need to fill out a request for review:

“If the project involves works, undertakings or activities in or near water aimed at preventing, controlling or eradicating aquatic invasive species, please submit a [request for review form](#). Send completed forms [to your regional office](#).” (From: [Request a review of your project near water: Step 3. Check if your project needs a review \(dfo-mpo.gc.ca\)](#))

When do you not need an authorization?

The areas where review is not required are outlined as follows:

- [“approved marine disposal or dumping sites](#)

- *tailings impoundment areas as listed in [Schedule 2 of the Metal and Diamond Mining Effluent Regulations](#)*
- *artificial waterbodies that aren't connected to a waterbody that contains fish at any time during any given year, such as:*
 - *private ponds*
 - *roadside drainage ditches*
 - *quarries and aggregate pits*
 - *irrigation ponds or channels*
 - *stormwater management ponds*
 - *agricultural drains and drainage ditches*
 - *commercial ponds like golf course ponds or stocked fishing ponds*
- *any other waterbody that:*
 - *doesn't contain fish at any time during any given year*
 - *isn't connected to a waterbody that contains fish at any time during any given year"*

(From: [Request a review of your project near water: Step 3. Check if your project needs a review \(dfo-mpo.gc.ca\)](#))

Essentially, any area that contains fish or fish habitat is subject to the *Fisheries Act*.

How to apply.

Applications for any projects involving DFO should consult the "projects near water" page:

<https://www.dfo-mpo.gc.ca/pnw-ppe/index-eng.html>

Here you will find a heading titled "Request a project review". You can download the project review form and email it to your regional office. The form is a collection of fields for information about the proponent, and project details. These forms can then be emailed to the DFO regional office. Our regional office email is:

Ontario

Fish and Fish Habitat Protection Program

Fisheries and Oceans Canada

867 Lakeshore Rd

Burlington ON L7S 1A1

Telephone: 1-855-852-8320

Email: FisheriesProtection@dfo-mpo.gc.ca

Additionally, more information about applying for invasive species control projects can be found here:

<https://www.dfo-mpo.gc.ca/species-especes/ais-eae/apply-appliquer/index-eng.html>

Questions about authorizations for aquatic invasive species control can be sent to this email address DFO.CA.AISP-EAEP.CA.MPO@dfo-mpo.gc.ca

Species At Risk Act (SARA)

When do you need an authorization?

The *Species At Risk Act* applies to federally regulated species at-risk in areas of federal jurisdiction. This includes crown lands, waterways that are federally controlled, and fisheries (see *Fisheries Act*). The act also applies to species listed under the *Migratory Birds Convention Act* which are also listed in the *Species At Risk Act*.

If you are conducting a project in water, you will require an authorization if species at risk are present, or if the area is critical habitat. The DFO may issue SARA authorizations when you apply for an authorization under the *Fisheries Act* for at-risk fish & molluscs. Other species at risk may require a separate SARA authorization (i.e., birds, turtles, amphibians) as these are not considered part of a fishery. See here for an overview of the guidelines: <https://www.canada.ca/en/environment-climate-change/services/species-risk-education-centre/your-responsibility/your-responsability-guide.html>

When do you not need an authorization?

For aquatic invasive species control, you do not need a SARA authorization if you can meet all of the following conditions:

1. Your project is on private property or land/water under provincial jurisdiction.
2. Your project is outside a fishery (see *Fisheries Act*).
3. Your project is not expected to impact any at-risk birds which are also protected in the *Migratory Birds Convention Act*.

You may require a provincial *Endangered Species Act* authorization if there are provincially listed species at risk present since this act applies anywhere in the province (see *Endangered Species Act* section).

How to apply

You should contact wildlifeontario@ec.gc.ca to get a preliminary screening of your project or if you have specific questions about the authorization process. You may be asked to fill out and submit a form about your project details. Further information can be found here: [Guidelines for permitting under Section 73 of Species at Risk Act - Canada.ca](#)

Pest Control Products Act

When do you need an authorization?

This act regulates pesticides and their usage in Canada. You don't need an authorization for this act per se, but you do need to make sure you are following the legislation. What this requires is following the instructions on the product label that you may be using, and only using products that are approved for

use in Canada. You can find product information listed here: <https://pr-rp.hc-sc.gc.ca/lr-re/index-eng.php>.

This should not be taken for simplicity, however, as many pesticides which are employed against invasive species may require you to have a license to use, require authorizations, or may be restricted to the public. Pesticides are also regulated in Ontario under the *Pesticides Act* which is discussed in the next section.

When do you not need an authorization?

If you are not using pesticides, this does not apply.

Migratory Birds Convention Act

When do you need an authorization?

Killing, harming, or destroying migratory birds or the nest of migratory birds protected under the act is illegal. You will need an authorization if this is unavoidable in carrying out an activity. Some species also listed under the Act are listed under SARA – SARA permits must be sought separately.

When do you not need an authorization?

You do not need a permit if you can avoid killing, harming, or destroying migratory birds or their nests, but **you must adhere to certain conditions to avoid harm to migratory birds and their nests.**

If you encounter nests or breeding sites:

“- halt all disruptive activities,

- avoid disturbing surrounding vegetation,

- protect the nest with a buffer zone,

- avoid the immediate area until the young have left the vicinity of the nest

- avoid, adapt, reschedule, or relocate planned activities.”

(Canadian Wildlife Service, Personal communication, November 24, 2022)

Additional general good practices:

- plan activities during seasons when birds are not nesting

- survey ahead of time for confirmed or probable bird breeding and nesting

For cutting/removing vegetation you do not need a permit so long as you adhere to these practices

How to apply

There does not appear to be a specific channel to apply, but you should contact wildlifeontario@ec.gc.ca for questions on authorizations and permits. Information on the act can be found here: [Migratory Birds Convention Act \(MBCA\) and Regulations - Canada.ca](#)

Provincial Acts

Invasive Species Act

When do you need an authorization?

Invasive species control projects do not require an authorization under the *Invasive Species Act*. However, you must ensure that you are taking reasonable precautions to prevent the spread of the invasive species (i.e., washing equipment, proper disposal of seeds and live materials). Under the Invasive Species Act:

*It is illegal to import, possess, deposit, release, transport, breed/grow, buy, sell, lease or trade **prohibited** invasive species.*

*It is illegal to import, deposit, release, breed/grow, buy, sell, lease or trade **restricted** invasive species.*

(From: [Ontario Invasive Species Act – Invasive Species Centre](#))

In the case of controlling aquatic vegetation, the ‘possess/transport/deposit/’ release part of those actions would be what you have an exemption for, because these actions are incidental to cutting and disposing of phragmites. Regardless, you must include practices in your management activities that prevent the spread of material during your management activities. The best option is to follow the best management practices, when dealing with control of invasive plants (see Nichols, 2020 for phragmites).

Actions include:

1. Cleaning up as much material as possible from your site.
2. Performing manual/mechanical control before the seeds are viable.
3. Allowing plant material to dry out and die before sending it to landfill.
4. Cleaning all equipment/vehicles before leaving the site.

Public Lands Act

When do you need an authorization?

The *Public Lands Act* governs what activities may take place on crown land. This includes activities in the water since it is technically considered crown land. In general, you can perform aquatic invasive species removal if you follow the rules below, but if you cannot adhere to all of them you will need to apply for an authorization.

When do you not need an authorization?

“You do **not** need a work permit under the *Public Lands Act* if you can follow **all** of these rules. You:

1. are the waterfront property owner or conducting work on behalf of the property owner.
2. minimize the removal of native aquatic vegetation (e.g., wild rice)
3. dispose of the plants/material you remove on dry land to prevent it from re-entering the water.

4. use, operate or store any wheeled or tracked machinery/equipment on dry land, or on a barge or vessel.
5. only use mechanical devices (e.g., rake, cutter bar) or your hands to remove plants, and do not dredge the bed of the waterbody.
6. do not carry out work during fish spawning season or during the time of other critical fish life stages, as set out in the In-water Work Timing Window Guidelines.”

(From: [Remove invasive aquatic plants | ontario.ca](https://www.ontario.ca/page/remove-invasive-aquatic-plants))

How to apply.

Further details on the act are described on this page (<https://www.ontario.ca/page/remove-invasive-aquatic-plants>) including how to apply for a work permit. Note, the area that can be subject to removal efforts is shown on the bottom of the page. The area would be straight out from the property lines of those landowners agreeing to the removal efforts.

Endangered Species Act (ESA)

When do you need an authorization?

The *Endangered Species Act* is similar to the federal *Species at Risk Act*. You may need an authorization if your work is expected to negatively impact individuals or the habitat of species at risk. This act applies in areas of provincial jurisdiction. Species at risk and their habitats are automatically protected in Ontario on public or private lands. Most waterways are under provincial jurisdiction, but some like Lake Ontario and the Trent-Severn are under federal jurisdiction. Most lakes are under provincial jurisdiction, so the *Endangered Species Act* would apply.

When do you not need an authorization?

You do not need an authorization if the work is not in an area where there is potential to impact individuals of species at risk or their habitat.

How to apply.

First, you will need to reach out to SAROntario@ontario.ca for a preliminary screening of your project. You will need to submit a summary of your project including a collection of data indicating what species at risk are present or likely to be present in the project area. This stage will determine if you need to apply for a formal authorization. You may simply be asked to proceed following certain conditions.

It is best to cover your bases with your initial plan to ensure you are not in contravention of the act. This can include adhering to less intensive practices and timing windows that ensure species at risk are not nesting or breeding.

Details on information required for project submissions can be found in this guide [Client's Guide to Preliminary Screening for Species at Risk \(lambtonshores.ca\)](https://www.lambtonshores.ca/client-guide-to-preliminary-screening-for-species-at-risk).

Pesticides Act

When do you need an authorization?

Pesticide usage in Ontario in water requires an authorization from the Ministry of Environment, Conservation, and Parks. Furthermore, the use of most classes of pesticides in Ontario requires a license or a specially trained operator for their usage. When considering using pesticides, the best option is probably to hire a professional to apply the pesticide.

When do you not need an authorization?

Authorization is always required to use pesticides in water.

How to apply.

See this link for information pesticide licensing and authorizations:

<https://www.ontario.ca/page/pesticide-licences-and-permits>

Other legislation

Municipal by-laws

We have discussed the applicable rules and regulations at the federal and provincial level, but you should also screen your municipality's by-laws for references to invasive species control or work in water. While these issues are mostly under higher jurisdiction, some communities may have by-laws relating to these subjects, it is always best to double check!

Example project:

You want to cut a patch of phragmites growing in a cattail marsh in open water directly offshore from your property and a neighbour's property. You and your neighbour have arranged a date to cut the phragmites with some help from family and friends. You will not use any wheeled motorized vehicles in water (only cutting it from boats/canoes), and plan to dry out the phragmites at home in black plastic garbage bags before taking it to landfill. This will take place in August, after most animals have finished breeding and raising young, and before the seeds of the phragmites mature.

Act	Jurisdiction	Ministry	Authorization review required?
<i>Invasive Species Act</i>	Ontario	Natural Resources and Forestry	No – Invasive species control does not require authorization, but you must follow the rules under the invasive species act.
<i>Pesticides Act</i>	Ontario	Environment, Conservation, and Parks	Not applicable – you are not using pesticides, so this does not apply
<i>Public Lands Act</i>	Ontario	Natural Resources and Forestry	No - Invasive species control does not require an authorization under this act so long as you meet the conditions in the <i>Public Lands Act</i> .

<i>Endangered Species Act</i>	Ontario	Environment, Conservation and Parks	Yes – provincially designated species at risk in the area may be present and cutting phragmites may affect individuals and their habitat.
<i>Pest Control Products Act</i>	Federal	Pest Management Regulatory Agency	Not applicable – you are not using pesticides, so this does not apply
<i>Species At Risk Act</i>	Federal	Environment & Climate Change Canada	No – this is not an area where federally designated terrestrial (i.e., not a fish, mollusc, or aquatic mammal) species at risk are regulated. However, DFO will review the potential impact on aquatic species at risk when you apply to the Fisheries Act and may conduct a SARA authorization review.
<i>Fisheries Act</i>	Federal	Fisheries & Oceans Canada	Yes – your activity may affect fish and fish habitat, as well as aquatic species at risk. A <i>Fisheries Act</i> review will be necessary for any in water work.
<i>Migratory Birds Convention Act</i>	Federal	Environment & Climate Change Canada	No – no authorization is required for vegetation cutting, but you are still required to avoid harm to migratory birds and their nests. Completing the project out of breeding season will help avoid disturbing birds and delaying your work.

- Yes
- No
- Not applicable

References

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Environment and Climate Change Canada. (2020, May 13). *A guide to your responsibilities under the Species at Risk Act*. Retrieved from: <https://www.canada.ca/en/environment-climate-change/services/species-risk-education-centre/your-responsibility/your-responsability-guide.html>

Appendix: Additional Resources

A: Timing windows for fish spawning.

<https://www.dfo-mpo.gc.ca/pnw-ppe/timing-periodes/on-eng.html>

B: Nesting periods for birds.

<https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/general-nesting-periods/overview.html>

C: Avoiding harm to Migratory Birds.

<https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/reduce-risk-migratory-birds.html>

D: Aquatic Species at Risk map – federally listed aquatic species at risk.

<https://www.dfo-mpo.gc.ca/species-especes/sara-lep/map-carte/index-eng.html>

E: Ontario Species at Risk – see what species are listed in Ontario, and you can cross reference this with some of the other resources to determine which may be around your project site.

<https://www.ontario.ca/page/species-risk-ontario>

F: NHIC make a natural heritage map – identifies species and ecological communities of interest in the general area of your project.

https://www.lioapplications.lrc.gov.on.ca/Natural_Heritage/index.html?viewer=Natural_Heritage.Natural_Heritage&locale=en-CA

G: iNaturalist – see what species have been identified in your area.

<https://www.inaturalist.org/>

H: In water work timing guidelines Ontario.

<https://www.ontario.ca/page/water-work-timing-window-guidelines>

I: Best Management practices for Invasive species

<https://www.ontarioinvasiveplants.ca/resources/best-management-practices/>