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Conservation Ontario Council Report

From: Leslie Rich, Policy and Planning Officer
Date: November 25, 2016
Subject: Conservation Ontario's Input into the Review of the *Fisheries Act*

Summary

Conservation Ontario is participating in the Provincial consultation on the review of the Federal *Fisheries Act* by submitting the attached letter raising concerns about letters of credit for offsetting projects where the purpose of the project is focused on habitat restoration and the work is being undertaken by a public agency. It is anticipated that Phase Two of the consultation on the *Fisheries Act* will be released in spring 2017 and will include Fisheries and Oceans Canada's staff proposals to address concerns raised in Phase One of the review.

Recommendation

THAT the submission on "Conservation Ontario's Input Into the Review of the Fisheries Act" dated November 25, 2016 be endorsed.

Background

In 2012 and 2013 a series of changes were made to the *Fisheries Act*, through the use of omnibus bills. The intention of the changes were to focus the Act's regulatory regime on managing threats to the sustainability and ongoing productivity of Canada's commercial, recreational and Aboriginal fisheries. Also as a result of these changes, the partnership agreements between Conservation Authorities and Fisheries and Oceans Canada (DFO) became null and void. In the spring, 2016 the new federal government announced that they would be undertaking a review of environmental and regulatory processes, including a review which looks at "restoring lost protections and introducing modern safeguards to the *Fisheries Act* and the *Navigation Protection Act*".

In Phase One of the review, it is the Standing Committee on Fisheries and Oceans who is charged with consulting with experts and the public. In order to do this, the Standing Committee is receiving expert

testimony and has posted an online survey to receive public input. In Phase Two of the review, staff at DFO will present a number of scenarios to address concerns identified in Phase One. This will likely take the form of a discussion paper and there will be an opportunity for public input.

At the September 2014 meeting, Conservation Ontario endorsed a new Memorandum of Understanding between Conservation Ontario and DFO. This MOU acknowledges that DFO and CAs have their respective responsibilities for regulatory reviews and approvals and aquatic resource protection, and will work together to develop a collaborative approach to fisheries and aquatic resource protection in Ontario. The MOU builds upon a strong partnership history between the two agencies and is felt to be beneficial with regard to maintaining efficient client service.

Current Status

The CO-DFO MOU Working Group met on October 19th. At that meeting the current review of the *Fisheries Act* was discussed. It was agreed that the survey being used for Phase One of the consultation was not conducive to providing a detailed, coordinated response on behalf of CAs. Through discussions with the group, it was determined that Conservation Ontario's efforts should be focused on responding to the Phase Two consultation document. It was acknowledged that CO could identify concerns through the provincial consultation on the *Fisheries Act* in Phase One.

In preparation for the October meeting, CO representatives on the CO-DFO MOU Working Group had been tasked with identifying any major issues that they or others were experiencing as a result of the amendments to the *Fisheries Act*. Through this discussion, it was noted that the costs associated with securities for offsetting was the major issue and it was decided that CO would concentrate their input to Phase One on this issue. L. Rich contacted Audie Skinner from the Ministry of Natural Resources and Forestry (provincial lead for *Fisheries Act* consultations) and it was agreed that while the securities issue was not part of the terms of reference for the review, it was none-the-less an important consideration that the Province was willing to identify as part of their response. It was suggested that Conservation Ontario direct a letter to Mr. Skinner to be included as part of the briefing package.

L. Rich contacted Deb Martin-Downs (CVC) to discuss the issue in further detail and received a copy of a letter that CVC had sent to then-Minister Tootoo in March, 2016. The letter outlined concerns related to the new requirement for public agencies to post letters of credit as part of off-setting projects. In the case of the Lakeview Waterfront Connection project, a partnership between City of Mississauga and CVC, the letter of credit was issued for \$8.4 million and fees associated with the letter of credit, including bank and administrative fees are \$230, 000. These fees represent a permanent loss of public funds. The purpose of this project is habitat development so therefore, the need for a letter of credit is questioned. Furthermore, the project is being undertaken by public agencies that have little risk of insolvency. It is felt that these securities may discourage other organizations from undertaking similar habitat restoration projects in the future.

Conservation Ontario staff drafted a letter which was shared with D. Martin-Downs and the attached letter was sent. A link to the survey for Phase One of the consultation was forwarded to the CA Aquatics Group and included in the CO weekly email updates.

Conclusion

Conservation Ontario will continue to work with the Provincial government to provide input into the review of the *Fisheries Act*. The next meeting of the CO-DFO MOU Working Group will be scheduled around the release of the Phase Two consultation document. It is anticipated that Conservation Ontario will be coordinating a response to the Phase Two consultations.



November 25, 2016

Audie Skinner
Aquatic Ecologist
Ministry of Natural Resources and Forestry
300 Water St
Peterborough, Ontario K9J 8M5

Re: Conservation Ontario's Input Into the Review of the *Fisheries Act*

Dear Mr. Skinner:

Conservation Ontario is the network of Ontario's 36 Conservation Authorities (CAs). CAs are community based conservation organizations that provide comprehensive technical, planning, educational and recreational services. CAs are empowered by the provincial *Conservation Authorities Act* to undertake programs to further the conservation, restoration, development and management of natural resources on a watershed basis. Conservation Authorities have extensive knowledge of the federal *Fisheries Act* as prior to the amendments to the Act all 36 CAs had signed partnership agreements with Fisheries and Oceans Canada (DFO) to review proposed projects under Section 35 of the *Fisheries Act* on their behalf. Since the amendments to the *Fisheries Act* many CAs continue to have at their disposal extensive fish habitat information and may have prepared fisheries / fish habitat management plans, many in collaboration with Ministry of Natural Resources and Forestry, that would benefit program development in their watersheds. In 2014, Conservation Ontario entered into a new Memorandum of Understanding with DFO to continue the positive working relationship that the organizations have established.

Conservation Ontario is aware that the Government of Canada is currently undertaking a review of environmental and regulatory processes and has encouraged Conservation Authorities to submit their individual comments through the survey being used for the Federal consultation on the *Fisheries Act*. Conservation Ontario, on behalf of the collective, is particularly concerned with one amendment to the *Fisheries Act* and feels that it fits within the mandate of this review which includes "restoring lost protections and introducing modern safeguards to the *Fisheries Act*". Since the *Fisheries Act* was amended in 2012 letters of credit have been required for offsetting projects as part of an authorization. This amendment has significant implications on the work conducted by Conservation Authorities and other public agencies and may impede or even eliminate certain opportunities to realize fisheries habitat restoration in Ontario.

For example, the [Lakeview Waterfront Connection](#) (LWC) is an ambitious initiative being led in partnership by the Region of Peel and Credit Valley Conservation (CVC) that will see the creation of a new 26 hectare conservation area. The LWC will replace the existing shoreline with a more natural, diverse and ecologically functional shoreline. A larger connected stretch of beach will provide habitat for birds and fish as well as an opportunity for residents to get close to the lake. Three rocky islands will be

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built offshore and several coastal wetlands are proposed in the feature, all of which will provide much-needed habitat for fish.

The LWC Environmental Assessment received approval by the Ontario Ministry of the Environment and Climate Change in 2015, and the Province of Ontario also recognized “*the potential of the Lakeview lands, with an opportunity to create a new and sustainable mixed-use community along Mississauga’s eastern waterfront, with arts and culture districts, housing, employment, and retail and recreational uses*” in its budget (2016). Although the identified goal of the LWC Project is “*to create a new natural park that will establish ecological habitat and public linkages on the eastern Mississauga waterfront*”, it nonetheless required an authorization under the *Fisheries Act*. The application included the required submission of a plan to undertake offsetting measures to counterbalance the unavoidable residual serious harm to fish in addition to a letter of credit. The letter of credit must be sufficient to complete the offsetting plan and monitoring program, including administration. The letter of credit associated with LWC was issued for \$8.4 million. Additional bank and administration fees associated with the letter of credit are \$230,000, representing a *permanent loss* of public funds. DFO staff have determined that Conservation Authorities and municipalities are not exempt from the requirement for a letter of credit.

It is agreed that there is a need for securities in some cases where there is a risk that the work may not be undertaken, for projects undertaken by public agencies, there is no anticipation of insolvency and thus there is an extremely low risk that the projects will not be completed as proposed. Further, where projects are designed to be habitat development then a letter of credit is redundant. The issue of securities for offsetting measures is of serious concern because of its financial and administrative implications for Conservation Authorities and other public agencies undertaking initiatives aimed at restoring degraded fish habitats. Without the support of their Regional partner, CVC would not have been able to guarantee the letter of credit and the project may have been terminated. The fees associated with these securities represent an unacceptable loss of taxpayer money. As such, Conservation Ontario respectfully requests your assistance in recommending that the Government of Canada revisits the requirement for letters of credit from public agencies, including Conservation Authorities, in any future amendments to the *Fisheries Act*.

Thank you for the opportunity to provide input into the provincial government consultation on the federal *Fisheries Act*. Should you have any questions about this letter, or require any additional details, please do not hesitate to contact me at extension 226.

Sincerely,



Leslie Rich
Policy and Planning Officer

c.c.: CAOs, All Conservation Authorities

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