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June 10, 2011

Dear: Cass Goulet and Darlene Dove:

Re: Guidance to Support the Application of Subsection 10(1) (the habitat provision) of Ontario's Endangered Species Act, 2007 (EBR #: 011-2841) and Endangered Species Act (ESA) Submissions Standards for Activity Review and 17(2)(c) Overall Benefit Permits (EBR # 011-2842)

Thank you for the opportunity to provide comments regarding the Ministry of Natural Resources' (MNR) "Guidance to Support the Application of Subsection 10(1) (the habitat provision) of Ontario's Endangered Species Act, 2007", and "Endangered Species Act (ESA) Submissions Standards for Activity Review and 17(2)(c) Overall Benefit Permits" including the following documents:

- Endangered Species Act (ESA) Submission Standards for Activity Review and 17(2)(c) Overall Benefit Permits
 - Draft Information Gathering Form
 - Draft C-Permit Application Form
 - Draft Guiding Principles of Overall Benefit
- Categorizing and Protecting Habitat under the Endangered Species Act, 2007
 - Appendix A: Information Gathering Form for Projects that May Impact Species and/or Habitat Protected under the Endangered Species Act, 2007

Conservation Ontario is the network of Ontario's 36 Conservation Authorities (CAs).

General Comments

Conservation Ontario appreciates that these documents make repeated reference that additional permits and approvals may be required, including those of CAs. Through the pre-consultation process with CAs, additional requirements may be identified, which may ultimately assist with the ESA permit process. All references to Conservation Ontario's homepage should be updated to www.conservationontario.ca.

The documents also make reference to proponents self-screening to determine whether their activity may require a permit under the *Endangered Species Act*. The challenge with this type of approach is that it is only effective for those who are aware of the legislation and for those species that we are aware exist in a particular location. This appears to be a legislative gap which has not been adequately addressed through these documents.

Engagement of landowners using incentives as opposed to regulation is likely one important part of maintaining these species. The availability of the Ministry of Natural Resources' Species at Risk Stewardship Fund should be continued and augmented as part of a comprehensive program to assist in the recovery of endangered species.

One of the stated objectives of the ESA is to "promote stewardship activities, to assist in the protection and recovery of species that are at risk". Based on these documents it appears that projects for restoration, stewardship or habitat improvement may require permits under the ESA. Additionally, it appears that projects whose aim is to benefit and improve habitat for non-endangered species, may also be subject to permitting requirements under the ESA legislation. While Conservation Ontario acknowledges the importance of the *Endangered Species Act* and its enforcement through the permitting process, the timeframes and costs associated with this process may discourage Conservation Authority staff and the private landowners and local partners they collaborate with from undertaking a stewardship project. The five month service standard for making a decision regarding whether or not a permit will be issued may not fit within the tight timelines that funding partners provide to CA staff. This may result in restoration efforts being focused on another species/location.

In order to assist CAs, private landowners and their partners in undertaking important stewardship activities it is recommended that a section be inserted into both primary documents regarding stewardship. It is suggested that the requirements of stewardship permits be streamlined and expedited to prevent the permitting process from becoming a deterrent to good stewardship activities. CA staff have a number of streamlining ideas and would be pleased to work with MNR to develop an appropriate protocol. An additional protocol should be put in place for emergency works. This will help to prevent inadvertent contraventions of the ESA when lives and property are at risk.

Document Specific Comments

Endangered Species Act (ESA), 2007 Submission Standards for Activity Review and 17 (2)
(c) Overall Benefit Permits

- Page 14; line 367, please provide a definition for "private land".
- Page 14; line 371, additional details are requested within the Environmental Registry information. These details include why some projects require postings and others do

not and the process that the MNR undertakes when responding to comments received through the registry.

Categorizing and Protecting Habitat under the Endangered Species Act, 2007

- Page 5; line 158, “near protected habitat” requires additional clarification over and above what is included in the glossary. Examples may be helpful to define exactly what this means; otherwise, it may result in an officially induced error.
- Page 9; line 261, a reference is made to undertaking a “risk management approach”. It is recommended that it is clearly laid out that this document represents the framework within which risk management is evaluated.
- Page 10; line 273, Conservation Ontario appreciates that this document recognizes that the categories and permitting will be an iterative process based on new species and process information received. It may be helpful to include details on how this new information will be compiled into the approaches and decisions for protecting and recovering these species.
- Please provide a definition of ‘functional linkage’ in the glossary

Appendix A: Information Gathering Form for Activities That May Affect Species and/or Habitat Protected Under the Endangered Species Act, 2007

- Page 8; line 289, please add “government agency” and “educational institutions” to the list of activity sectors.
- Page 13; line 442, further to our comments above, this section puts the onus on proponents to identify what species at risk are present through field surveys. The challenge is that the proponent would need to know that a species at risk may be present to undertake the surveys in the first place. It is suggested that greater opportunities to improve accessibility to District level ESA mapping be explored and that public outreach for those areas identified as having species at risk habitat be undertaken.
- Page 14; line 494, this section should include confirmation that an additional permit will not be required to survey known occurrences of Species at Risk in Ontario (SARO) species.

Thank you once again for the opportunity to comment on the “Endangered Species Act (ESA), 2007 Submission Standards for Activity Review and 17 (2)(c) Overall Benefit Permits” and “Categorizing and Protecting Habitat under the Endangered Species Act, 2007” draft policies, and their supporting documents. Given the complexity of the ESA documents, it is recommended that a flow chart be considered to outline how these documents work together. Should you have any questions regarding the above comments, please contact myself at (905) 895-0716 ext. 228.

Sincerely,



Leslie Rich
Policy and Planning Officer

c.c. Conservation Authority CAOs/GMs

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