



Glenn Desy  
Species at Risk Biologist  
Ministry of Natural Resources  
Policy Division, Species at Risk Branch  
300 Water Street, Floor 4  
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Peterborough, Ontario K9J 8M5

April 4, 2011

Dear Mr. Desy:

**Re: Amendments to the General Regulation (Ontario Regulation 242/08) under the *Endangered Species Act*, to prescribe the habitat for three species at risk (EBR # 011-2471)**

Thank you for the opportunity to provide comments regarding the Ministry of Natural Resources (MNR) Amendments to the General Regulation (Ontario Regulation 242/08) under the *Endangered Species Act*, 2007 to prescribe the habitat for three species at risk. Conservation Ontario is the network of Ontario's 36 Conservation Authorities. Our comments will focus on the proposed habitat protection for Redside Dace.

The habitat regulation is non-specific and very flexible in its approach. In order to effectively protect the species more site specific work needs to be undertaken to identify regulated habitat. We caution however that it is important that the flexibility does not lead to ambiguity in the application of the regulation. The "Guidance for Development Activities in Redside Dace Protected Habitat" offers an opportunity to provide clarity to ensure that the regulation is implemented as it is intended. Therefore, we recommend that the guidance document be referenced within the regulation.

An important element of the implementation of this regulation is the provision of screening maps for Redside Dace regulated habitat. The lack of finalized mapping has created uncertainty and unnecessary delays. We recommend that the MNR forward copies of the screening maps as soon as possible to municipalities and Conservation Authorities to assist proponents in determining whether the work is taking place in regulated habitat. Conservation Authorities would be pleased to provide guidance on the finalization of the maps to ensure that all habitats are properly demarcated.

The regulation should be clear as to whether or not "grandfathering" of existing approvals is contemplated. It is important that proponents and planning authorities are given clear direction in this regard.

Many of the terms used within the regulation require further clarification. We provide the following comments:

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Term	Comment	Recommendations
Elements (of direct habitat)	<ul style="list-style-type: none"> <li>Unclear what constitutes an element</li> <li>The statement infers that there are some element of direct habitat that would not be protected</li> </ul>	<ul style="list-style-type: none"> <li>The specific elements should be listed, such as bed substrate, pool form, riparian condition, etc</li> <li>Clearly enumerate any elements of direct habitat which would not be protected</li> </ul>
Suitable Habitat	<ul style="list-style-type: none"> <li>Unclear of the factors which determine if habitat is still suitable</li> </ul>	<ul style="list-style-type: none"> <li>Provide a definition and/or description of suitable habitat, identify whom will be determining whether the habitat is suitable</li> </ul>
Reasonable likelihood of successful rehabilitation	<ul style="list-style-type: none"> <li>Unclear</li> </ul>	<ul style="list-style-type: none"> <li>Provide a definition and detailed examples which can be used as a template</li> </ul>
Vegetated Areas	<ul style="list-style-type: none"> <li>Need to clarify if agricultural lands need to be vegetated to be included as part of indirect habitat; if so, for how much time during the year?</li> </ul>	<ul style="list-style-type: none"> <li>Provide a definition which specifies the length of time per year that lands need to be vegetated</li> </ul>
Bankfull Width	<ul style="list-style-type: none"> <li>It is unclear as to how the 7.5 m wide figure was derived</li> <li>The bankfull width should be determined using known provincial protocols/guidelines currently being used in the field</li> </ul>	<ul style="list-style-type: none"> <li>A reference should be provided which indicates where the 7.5 m figure came from</li> <li>Bankfull should be consistent with accepted provincial protocols such as Ontario Stream Assessment Protocol or the CO/MNR Guidelines for Developing Schedules of Regulated Area (October 2005)</li> </ul>
Baseflow	<ul style="list-style-type: none"> <li>Unclear how the baseflow will be tested or measured</li> </ul>	<ul style="list-style-type: none"> <li>This information should be included in the guidance document</li> <li>The baseflow definition should be consistent with accepted provincial protocols such as the Ontario Stream Assessment Protocol</li> </ul>
Headwater Drainage Feature	<ul style="list-style-type: none"> <li>The definition should be expanded to include ephemeral features</li> </ul>	<ul style="list-style-type: none"> <li>Amend the definition</li> <li>Ephemeral features are defined as watercourses with seasonal or intermittent flow (MNR Technical Guide for River &amp; Stream Systems: Erosion Hazard Limit)</li> </ul>

Meanderbelt	<ul style="list-style-type: none"> <li>• The delineation needs to be ground truthed</li> <li>• Information provided by CAs should be used as a screening tool only, it is up to the proponent to identify the true extent of the meanderbelt area</li> </ul>	<ul style="list-style-type: none"> <li>• Measurements and procedures to define the meanderbelt should be identified in the guidance document; we recommend using accepted protocols such as CO/MNR Guidelines for Developing Schedules of Regulated Area (October 2005)</li> </ul>
Stream Reach	<ul style="list-style-type: none"> <li>• Definition can be loosely interpreted</li> </ul>	<ul style="list-style-type: none"> <li>• Additional details should be provided to make this term clearer</li> </ul>

Areas used by Redside Dace in the winter should also be included in the definition of direct habitat. The description of protected indirect habit as including “streams, headwater drainage features, groundwater discharge areas or wetlands that augment or maintain baseflows, coarse sediment supply and surface water quality” may limit the ability of the aforementioned features to be protected. We suggest that the “and” be replaced with an “or” to better reflect the Province’s desire to protect those features. Consideration should also be given to the protection of recharge areas in the habitat regulation as well as to maintaining water balance.

The timeline in which sampling must have taken place to identify if the habitat is still suitable keeps moving forward. This is a concern as the sampling may not adequately keep pace. It is also unclear at what point after the 20 year timeframe that the sampling needs to re-occur. The guidance document would be an ideal location to provide further information regarding the required intensity and sampling methodology that should be employed in order to re-designate a reach as occupied, recovery or non-occupied habitat.

The schedule for updating the regulation as new information or species records are found should be identified. As this regulation is location-specific it is unclear how any additional species found in an alternate area would be identified and protected. In order to ensure the protection of species-at-risk, it would be beneficial if the geographic areas included in the draft regulations were flagged as ‘areas where the species are known to occur however they do not limit the application of the regulation’.

It is understood that these habitat regulations are composed using layperson terms in order to convey information to the general public. Given the importance of Redside Dace in a number of CA watersheds, Conservation Ontario is interested in reviewing the legal description of the proposed Redside Dace species-specific habitat regulation.

Thank you again for the opportunity to provide comment on the proposed habitat protection for Redside Dace habitat. We trust that our comments will be of assistance. 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. CA GMs/CAOs with Redside Dace

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