



February 25, 2013

Krista Adams
Senior Permits & Agreements Specialist
Ministry of Natural Resources
Policy Division
Species at Risk Branch
Permits and Agreements Section
300 Water Street, Floor 2
Peterborough, ON K9J 8M5

Re: Conservation Ontario's Comments on the "Proposed approaches to the implementation of the Endangered Species Act which could include regulatory amendments to authorize activities to occur subject to conditions set out in regulation consistent with MNR's Modernization of Approvals" (EBR #011-7696)

Dear Ms. Adams:

Thank you for the opportunity to provide comment on the Ministry of Natural Resources' (MNR) "Proposed approaches to the implementation of the Endangered Species Act". Overall, Conservation Ontario (CO) is supportive, in principle, of the Ministry's initiative to modernize the Endangered Species Act (ESA) approvals process, however, it is noted that the posting lacks some of the information needed to fully assess the proposal. It is felt that the issues that the proposed approaches are attempting to address are ones that many Conservation Authorities (CAs) have experienced and Conservation Ontario looks forward to working with the Ministry to identify possible areas of increased efficiencies while maintaining the intent of the *Endangered Species Act*. Conservation Ontario provides the following comments:

General Comments

CA staff are supportive, in principle, of MNR's efforts to modernize approvals however this proposal lacks a clear articulation of its priorities and proposed outcomes, making it difficult to evaluate its utility. It is recommended that an identification of priorities and outcomes be the starting point for this and future proposals for modernization of approvals. These priorities and outcomes should be consulted upon with key partners and stakeholders through a public process.

It is understood that to successfully transform, MNR staff must examine opportunities to streamline the overly burdensome process of receiving an approval under the ESA. Authorizing activities to occur

P.O. Box 11, 120 Bayview Parkway Newmarket Ontario L3Y 4W3
Tel: (905) 895-0716 Fax: (905) 895-0751 Email: info@conservationontario.ca

subject to conditions set out in regulation may be an appropriate avenue for streamlining success. However, the efficacy of the streamlining program can only be determined if the MNR simultaneously commits to a rigorous monitoring program to review compliance with the regulations and ease of use. MNR staff should commit to an iterative approach to this transformation and make adjustments based on their monitoring program.

This proposal speaks to the potential for industry self-regulation. While this is a potentially viable streamlining solution, major information and data sharing gaps still exist which must be addressed as part of this proposal. For example, species at risk mapping will need to be widely available and easily understood. There will also be a need for continued MNR science support to ensure that the best advice is provided to proponents and as well as a mechanism to provide that advice to the proponent.

Finally, the requirement to report on cumulative disturbance, as suggested in the Forest Operations rules in regulation, should be extended to all classes of approvals. This will assist MNR to evaluate the efficacy of the streamlining program. In order to minimize disturbance in the first place, MNR should also include a requirement that the mitigation plans be developed and the implementation of the plans be overseen by a qualified individual.

Specific Comments

Transition for Activities that are Already Approved or Planned

Conservation Authority staff support, in principle, the Ministry's efforts to provide certainty to proponents with respect to the application of the ESA for an "approved activity". While the intent of the amendment is supported, additional work must be undertaken to clearly define the parameters around which this would apply. In order for this to be successful, the term "approved activity" must be clearly defined. It is recommended that the Ministry focus on defining the term "approved activity" and remove the possible transition for "planned activities" which is too ambiguous.

The regulation should consider some time frame cut-off for past approvals (e.g. within past 2-5 years). Otherwise past approvals may not meet current environmental requirements. This approach would enable MNR to give relief to activities that are already approved that have had regard for or are in keeping with current environmental standards. It is our understanding that, for activities that are already approved, the MNR through the 'rule by regulation' approach would provide a set of "best efforts" which could be established to reduce or mitigate the potential impact on species and their habitats.

Based on the Environmental Registry posting, it is unclear whether the proposed transition for activities that are already approved or planned is intended to be in place as a permanent or temporary measure. MNR should clarify which is the case.

Moving forward, it is recommended that the MNR consider including Species at Risk biologists in the review of higher level planning studies that determine land uses. The current practice is not to have the biologists involved in the planning process until the proposed activity is fairly imminent and an Overall Benefit permit is possibly required. Having MNR involved in higher level planning studies will be a more efficient use of staff time and will reduce proponent uncertainty moving forward.

Existing Operations- Existing Drainage Infrastructure

Conservation Ontario is supportive of working with our Municipal partners to streamline approvals related to the maintenance and repair of drainage infrastructure. The requirement for each Municipality to develop a mitigation plan (presumably for each municipal drain that works are being proposed for) may not result in any reduced cost for a Municipality. Moreover, the mitigation plan would likely include timing window restrictions. When there are multiple species at risk present on a site, this often results in a very limited time period for maintenance and repair works to be undertaken. Further review should be undertaken as to the most appropriate means for streamlining approvals for municipal drain maintenance and repair activities.

Streamlined Approaches for New Activities to Benefit Species

Conservation Authority staff were cautiously supportive of shifting from an application and review approach to an approach where individuals or businesses would follow rules aimed at benefiting species at risk via regulation. There are some similar examples of this being quite successful – such as Fisheries and Oceans Canada’s Operational Statements however this approach is focused on low risk projects, not involving species at risk. A major challenge in the use of Operational Statements has been to convince proponents to use the notification forms. MNR may face similar challenges with proponent registration. This in turn may pose challenges for MNR to monitor compliance with this regulation. It is noted that the MNR does not identify a compliance monitoring nor an enforcement scheme associated with these proposed regulatory amendments and this represents a major gap in the proposal.

Protection or Recovery

Generally Conservation Authority staff were supportive of this proposed amendment. Much of the work undertaken by CAs supports the protection, enhancement, restoration and rehabilitation of environmentally sensitive lands, enabling activities which assist in the protection or recovery of species at risk. The potential relief from receiving an ESA authorization for this type of work is welcome.

Should the government decide to proceed with proposed amendments, the “rules” and “regulation” will need to consider activities that might benefit one species but potentially be a dis-benefit to another. For example, reforestation for a woodland species (e.g. butternut) could affect habitat for open country species like meadowlark or bobolink. Moreover, MNR must provide leadership in helping proponents to effectively design their work for multiple conservation aims. For example, details regarding the specific needs of a certain species at risk should be provided to ensure that any rehabilitation works will not cause adverse effects.

Standardized Condition Approach

Based on the example provided (except in the case of Butternut), the standardized condition approach would appear to apply to the repair, maintenance and improvement of existing structures and infrastructure, which is an appropriate starting point. However, when one considers all of the permutations and combinations of structures, infrastructure, maintenance, etc and the various species identified under the ESA the development of specific regulations have the potential to become quite complex and an activity may be covered as it relates to one species but not another.

An alternate consideration would be the use of standardized conditions to streamline the overall benefit permitting process (Section 17(2)c) in addition to or as opposed to removing the requirement for permits altogether. The creation of multiple exemptions for certain species and/or sectors could result in several different approval procedures being needed for a single project with multiple species at risk. For example, a site with Butternut, Redside Dace, Bobolink and Barn Swallow, given the exemption

categories already in the Act, would require approvals under sections 4.1, 5, and 23.1 of Ontario Regulation 242/09, in addition to approvals under Section 17(2)c of the ESA. Were these exemptions not in place, all species could be processed under a single 17(2)c permit, which arguably could be considered a simplified process.

Safe Harbour

Conservation Authority staff saw utility in this proposed amendment, in that it may decrease barriers to private landowner participation in stewardship activities. Engaging private landowners is essential to the restoration of species at risk habitat, particularly in southern Ontario. This amendment also reflects the reality that ecosystem change is inevitable – a habitat such as grasslands, if not actively managed, may transform into forested habitat through succession over time.

Clarification is required on what is meant by “creating” or “improving” species at risk habitat. Habitat “improvements” implies that the habitat or species may already occur. If that is the case, it is unclear as to why the habitat would not already be protected under the ESA.

Conservation Ontario is highly supportive of MNR employing a pilot-scale approach to this proposed regulation. Furthermore, it is felt that the commitment to review and re-evaluation, where necessary, as described in the proposed ‘rules in regulation with registration’ should be extended to all other proposals in this posting.

Human Health or Safety

Conservation Authority staff were supportive of providing relief from the ESA for activities that are necessary to protect human health or safety. When crafting this proposed regulation, MNR staff are encouraged to consider that depending on the nature and extent of the “threat” there may still be opportunities to implement mitigation and/or offset impacts to species or habitats. Also, the regulation should be drafted to recommend and allow flexibility to achieve the best outcome for the species at risk. For example, the requirement that the replacement of an existing structure occur in the same location may not always be beneficial – as in the case when a bridge abutment is located within a watercourse.

Once again, thank you for the opportunity to provide comment on the “Proposed approaches to the implementation of the Endangered Species Act which could include regulatory amendments to authorize activities to occur subject to conditions set out in regulation consistent with MNR’s Modernization of Approvals”. Conservation Ontario looks forward to being provided with further details to clarify elements of the proposal in order to provide more specific comments in future consultations on these potential policy and regulatory changes. If you have any questions regarding these comments, please contact me at extension 228.

Sincerely,



Leslie Rich
Policy and Planning Officer

c.c. All Conservation Authorities, Chief Administrative Officers

P.O. Box 11, 120 Bayview Parkway Newmarket Ontario L3Y 4W3
Tel: (905) 895-0716 Fax: (905) 895-0751 Email: info@conservationontario.ca