



Ontario Federation of Agriculture

Ontario AgriCentre

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January 23, 2013

Ms. Krista Adams
Senior Permits and Agreements Specialist
Ministry of Natural Resources
300 Water Street
Floor 2
Peterborough, Ontario
K9J 8M5

Dear Ms. Adams;

RE: EBR Registry #011-7696 - 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.

The Ontario Federation of Agriculture (OFA) is Canada's largest voluntary general farm organization, representing more than 36,000 farm family businesses across Ontario. These farm businesses form the backbone of a robust food system and rural communities with the potential to drive the Ontario economy forward.

Transition for Activities that are Already Approved or Planned:

After listing, the Endangered Species Act sets time lines for the development of a Recovery Strategy, Government Response Statement and a Habitat Regulation, which can mitigate or lessen the impacts of the general habitat protection provisions of the Act. The full impacts of listing should be deferred until after the habitat regulation is in effect; for activities and applications that pre-date listing.

Alternately, the Committee on the Status of Species at Risk in Ontario (COSSARO) posts a preliminary list of species that it will be considering at forthcoming meetings, well in advance of the actual meeting date. The Ministry of Natural Resources should facilitate use of this time to determine the likely impacts of listing through habitat restrictions, and prepare to address the impacts either at the same time as the species is added to the SARO list, or very soon afterwards.

The OFA recommends that applications be considered based on the species status at the date of application.

Following listing, farmers repeatedly ask for clarification of the farming activities that will be unaffected by listing, as well as those that will be affected by listing. The Ministry of Natural Resources repeatedly declines to provide property owners with clear information on the activities they can continue to undertake, that will not negatively impact a listed species.

The OFA further recommends that the Ministry of Natural Resources provide clear information to

farmers on the impacts of listing on normal farm practices. Ideally, this information would be available to farmers before a species is added to the SARO list.

Streamlined Approaches for New Activities to Benefit Species:

Protection or Recovery

While we see potential benefits from the use of Multi-species Recovery Strategies, they should only be undertaken for species that are added to the SARO list at the same time. The Ministry of Natural Resources has unnecessarily created confusion and uncertainty by the delays brought about by combining the recovery strategies for bobolink and eastern meadowlark. Proceeding with the earlier listed bobolink would have not only simplified the process for eastern meadowlark, but have demonstrated that workable, practical solutions were achievable. While the outcome of the combined Recovery Strategy may result in the same workable, practical solutions, the impacts of the delay may have undermined the goals of recovery.

Endangered Species Act requirements should recognize and comply with other pre-existing statutory and regulatory requirements; e.g. recent draft habitat regulations for Eastern foxsnake, Gray ratsnake and Common five-lined skink proposed to include abandoned wells as protected habitat (hibernacula). Ministry of the Environment regulations require that abandoned water wells be plugged. Ministry of Natural Resources regulations require that abandoned oil and gas wells be plugged. Surely before draft regulations are released for comment, Ministry staff should poll other Ministries to identify potential conflicts with existing statutory and regulatory requirements.

The Endangered Species Act defines habitat as the “area on which the species depends, directly or indirectly, to carry out its life processes, including reproduction, rearing, hibernation, migration or feeding”. In the case of a barn-dwelling barn swallow, what exactly does the Ministry propose regulate? The nests in the barn, the barn itself, or the manure pile, barn yard and fields (pasture & crop) outside the barn, where the birds feed? To what degree is the farmer expected to modify or alter his normal farm practices? Must doors be left open to allow the birds to come and go freely, which could lead to structural damages to the barn itself, or to spoilage of stored feed and grain? Must the farmer ensure that bales of hay or straw do not provide inadvertent access to the nest by predators? The Ministry’s inability or unwillingness to clearly answer these questions is unacceptable. The Ministry of Natural Resources should rethink its application of habitat protection.

Furthermore, in the draft Barn Swallow Recovery Strategy, the impact of numerous “threats” are stated as unknown, particularly those that apply once the bird leaves Ontario. Nevertheless, it’s listed and Ontario farmers will bear the burden of its protection and recovery.

Once the Recovery Strategy, Government Response Statement and a habitat regulation are in place, there is a need to monitor the effects of actions and habitat protection policies on an ongoing basis. Furthermore, there is a need for a means to modify actions and habitat protection policies in the event they are not working as planned/expected. MNR should undertake monitoring of habitat regulations, based on adaptive management.

The Ministry of Natural Resources should reconsider its current focus on Ontario as an “island”, with no consideration of species status elsewhere, or where Ontario fits within the species overall range. Ontario is not an island, isolated and separated from its neighbours. Listing decisions should reflect the status of a species throughout its entire range, not solely in Ontario. Furthermore, where a species falls within its overall range (core v. outer fringe) is largely responsible for a species

relative abundance; greater in its core territory and lesser as one moves to its outer fringe. Lastly, the Act should differentiate between migratory species and non-migratory species, and set different requirements for species/habitat protection, plus recovery for migratory species versus non-migratory species. Failure to accommodate the differences between migratory and non-migratory species places the sole responsibility for protection and recovery on Ontarians.

The OFA recommends that:

- A Multi-species Recovery Strategy should only be undertaken for species that are added to the SARO list at the same time;
- Endangered Species Act requirements should recognize and comply with other pre-existing statutory and regulatory requirements;
- The Ministry of Natural Resources should rethink its application of habitat protection;
- MNR should undertake monitoring of habitat regulations, based on adaptive management;
- The Ministry of Natural Resources should consider the global status of a species, not solely its Ontario status; and
- The Ministry of Natural Resources should differentiate between migratory and non-migratory species.

Standardized Conditions Approach

For common, repeated practices, in a particular type of habitat (forest, grassland, etc.), standardized conditions should be established with no permit required if the activity follows these standard conditions. The regulations would simply require the “applicant” to notify the Ministry of Natural Resources before embarking. The Ministry of Natural Resources could follow up with random inspections to ensure compliance.

Endangered Species Act requirements should recognize and comply with other statutory and regulatory requirements; e.g. recent draft habitat regulations for Eastern foxsnake, Gray ratsnake and Common five-lined skink proposed to include abandoned wells as protected habitat (hibernacula). Ministry of the Environment regulations require that abandoned water wells be plugged. Ministry of Natural Resources regulations require that abandoned oil and gas wells be plugged.

MNR should seriously consider adoption of “protection” of broader habitat types in lieu of species-specific habitats. As well, there is no apparent consideration of response to differing habitat requirements of listed species that occupy the same area; e.g. the habitat requirements for Loggerhead Shrike differ from those for Bobolink, which also differ from those for Eastern Meadowlark. Does one species take precedence? If so, which one?

The OFA recommends that:

- standardized conditions should be established with no permit required if the activity follows these standard conditions;
- Endangered Species Act requirements should recognize and comply with other statutory and regulatory requirements; and
- MNR consider adoption of “protection” of broader habitat types in lieu of species-specific habitats.

Safe Harbour

Under the Safe Harbour approach, in exchange for undertaking additional conservation measures

for one or more listed species, property owners would be assured that future land, water or resource use restrictions for the listed species would not be imposed as a result of these conservation measures.

OFA supports the concept of safe harbour “exemptions” for individuals, businesses or organizations that create “new” habitat, or improve existing habitat. We see the concept as potentially providing the additional habitat listed species need to facilitate their recovery.

That being said, some implications of safe harbour need much further discussion, such as the impacts on adjacent properties (spillover effects) and the result of either species listed subsequent to the safe harbour agreement or other listed species that “move into” the safe harbour. Onerous application of the Endangered Species Act to adjacent properties, to species listed subsequently or to “move ins” would negatively impact the goals of the Act and the likelihood of safe harbour uptake. OFA’s preference would be to exempt an area around a safe harbour, based on the type of species it was created to host. Furthermore, we would advocate that species subsequently added to the SARO list that use the safe harbour as habitat, or SARO listed species that “move into” the safe harbour be likewise exempted from application of the Endangered Species Act to that safe harbour.

The OFA recommends that MNR explore adoption of safe harbour contingent upon exemptions for neighbouring properties, subsequently listed species and move ins.

Human Health or Safety

OFA supports exemption of activities necessary to protect human health or safety. Bill 55 [Strong Action for Ontario Act (Budget Measures), 2012] proposed to exempt infrastructure maintenance and repair. These facilities are already in existence. OFA would have supported those initiatives, had they proceeded. Maintenance and repair of infrastructure is vitally important to the protection of human health and safety. Failure or even delay to act pose a serious threat to human health and safety.

The OFA recommends that activities necessary to protect human health or safety, such as maintenance and repairs of infrastructure, be exempted from the Endangered Species Act.

Administrative Efficiencies:

Incidental Trapping of Species at Risk

Possession of Species at Risk by Accredited Organizations

The OFA declines comment on these as they are not applicable to farmers or their operations.

Commercial Cultivation of Vascular Plants

The OFA supports adoption of regulatory rules for the commercial cultivation of vascular plants in lieu of a paper-based notification system. This could provide new opportunities for Ontario farmers.

The OFA notes that in virtually every other instance when government brings in new rules, government makes a concerted effort to ensure broad public awareness before the rules actually come into effect, to publicize the impacts of the new rules, and the potential consequences of non-compliance. Following the “in force” date, enforcement agencies usually continue to publicize the new rules, and the consequences of non-compliance before non-compliance sanctions are

imposed. The Endangered Species Act currently provides no requirement to publicize the impending changes, and no post "in force" education and awareness campaign. Strict and broad species and habitat protection requirements come into effect within 90 days of the Minister's receipt of COSSARO's recommendations.

The OFA recommends that the Ministry of Natural Resources revise the Endangered Species Act to require that the public is made aware of impending listings, followed by a post "in force" education and awareness campaign before the full weight of the habitat protection requirements comes into effect.

In reviewing this posting, we recognize its limitation to regulatory amendments. Nevertheless, the OFA believes that structural amendments to the Endangered Species Act remain necessary. Among the legislative changes we advocate are:

- listing decisions be changed from automatic, based on COSSARO's report to the Minister, to Ministerial or Lieutenant Governor in Council, based on COSSARO's report plus the socio-economic implications of listing;
- COSSARO's listing decisions must reflect the overall global distribution and ranking, including any factors contributing to species decline that are outside the jurisdiction of Ontario to effect;
- membership in COSSARO be expanded to include one person representing agricultural community knowledge;
- COSSARO should prioritize the species it reviews, to consider species whose numbers are truly so low they are in serious trouble separately (and before) species that are still quite abundant, but whose numbers are in decline; and
- under some section 17 permits there can be a requirement/condition [17(5)(f)] that damaged or destroyed habitat be offset in another area; however from an agricultural perspective this can result in a double loss; first the acreage lost to development and second, the additional land taken to offset the initial habitat loss.

The Ontario Federation of Agriculture welcomes the opportunity to comment on 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. We look forward to seeing agriculture's perspective reflected in the final decision.

Yours truly,



Neil Currie
General Manager

NC/pj

cc: The Honourable Ted McMeekin, Minister of Agriculture, Food and Rural Affairs
The Honourable Michael Gravelle, Minister of Natural Resources
OFA Board of Directors