

FRENCH RIVER DELTA ASSOCIATION

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Dear Ms. Adams:

Re: EBR Registry Number: 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 French River Delta Association thanks the Ministry of Natural Resources for extending the comment period on EBR 011-7696.

This extension has allowed us the time to further review the Endangered Species Act Panel's report and recommendations. From this further review, we have developed more in depth recommendations and a few more recommendations than in our previous letter. We believe that our recommendations will simplify permitting and enhance the protection of habitat and endangered species in a cost effective decision making process.

We cross-referenced the Panel's recommendations with public documents on the Panel Members' web sites.

From this analysis, we think that most of the participants feel that the ESA is important legislation. We do believe, however, that the Ontario Waterpower Association and the Ontario Homebuilders' Association see the ESA as a nuisance which impedes their ability to control development to achieve their goals.

The ESA is an extremely important and timely act. If we relate the accepted challenges we now face with habitat and species losses in Lake Ontario, Lake Simcoe, Lake Nipissing, and Lake Huron, any change to the ESA and regulations must be undertaken with extreme caution.

Recommendations

The Panel notes: “While species protection after listing is critical, some potentially imprudent government and sector investments are being made and actions are being taken in the absence of direction with respect to species recovery”¹

Imprudent or ill considered investments indicate that proponents, and perhaps the MNR, have made decisions without critically analyzing the facts and an activities effect on endangered species.

We make the following recommendations, which we believe will bring clarity, transparency, and efficiencies to the MNR, resource developers, and stakeholders.

1. Risk Management

The present system appears to be a public relations exercise rather than an assessment process that deals with scientific and economic fact.

First and foremost, MNR has to stop whitewashing science to support political or commercial interests.

Example: “Construction of the Black Sturgeon Dam in 1960 was followed seven years later by an abrupt and long term collapse of walleye populations”²

Since the initial report, this statement has been changed to read: “The walleye populations collapsed in 1968 due to a combination of factors including overfishing, habitat loss and predations of juvenile walleye by rainbow smelt”³

Another example of whitewashing: “However after unlimited ramping invertebrate diversity decreased significantly, with a corresponding decrease in the proportion of environmentally sensitive invertebrates.”⁴

From this report, MNR states: “The diversity and abundance of invertebrates are different in hydro peaking and natural systems”⁵

Misrepresenting scientific facts does not protect habitat or species. It does mislead the public and confuses a proponent, which costs time and money. Ultimately it leads

¹ ESA Panel Report and Recommendations, page 6

² Black Sturgeon River Dam – A Barrier to Rehabilitation of Black Bay Walleye

³ Black Bay and Black Sturgeon River Native Fisheries Rehabilitation Page 1

⁴ Magpie River – Flow Management: Study Ramping Rate Restrictions

⁵ Diving In: Aquatic Research and Development Profile Series 6, page 6

to imprudent decisions that contradict MNR's own Statement of Environmental Values.

2. Mitigation Plans

It is time to admit that proponent developed and controlled mitigation plans are not working to protect habitat of species in the majority of cases.

A Department of Fisheries and Oceans study on mitigations and HADD restorations and habitat creation projects reports:

1. 63% of projects resulted in net loss of habitat productivity
2. 25% achieved no net loss
3. 12% achieved a net gain ⁶

The Black Sturgeon River report highlights that all attempts to restore the walleye population failed (some at great cost to the people of Ontario). The MNR's final attempt to mitigate and recover the population is to remove the dam, which is now in the Environmental Assessment process. To us, this proves that the plan is in process to mitigate this damage by dam removal at the expense of the Ontario taxpayer.

Clearly, our understanding of ecosystem function and how to protect or enhance habitat is much more limited than MNR staff biologists, but it is obvious to us that replacing scientific and regulatory oversight with Permit by Rule, Permit with Registration, Permit by Review, or exemptions will not meet the intent of the ESA or meet the minimum level of acceptance of any risk management model.

3. Subsidies

Remove subsidies that support activities which damage endangered species and their habitats.

Presently, the FIT contracts for new hydro projects offer a multitude of subsidies for development, but none for the protection of endangered species and their habitats. Amongst the subsidies for hydro are: 10 year exemption from Gross Revenue Charges; accelerated depreciation; government grants; generous above wholesale market pricing; peaking bonuses; long term contracts; low cost or free access to public resources and information; and a Class Environmental "screening" process as opposed to a thorough assessment process.

These subsidies are justified by continuing the urban legend that hydro is environmentally benign. It is not. These hydro dams present direct and impending danger to many endangered and threatened species and the government's biodiversity goals.

⁶ Advancing the Economics of Ecosystems and Biodiversity in Canada, page 25

By removing some or all subsidies that threaten endangered species, the developer would be able to direct their energies and resources to sites that will not damage endangered species and their habitats.

4. Protect from development, sites that support multiple endangered species

These sites should be subjected to serious scientific study. They represent Ontario's dwindling genetic bank for species and are priceless. By studying these sites, we may be able, in the future, to design mitigation and reintroduction strategies that work.

5. Advocate for Endangered Species

MNR should advocate for endangered species with other government ministries and agencies. The ESA is the law and the value of these species and biodiversity must be communicated to all Ministries. By educating other ministries, the MNR would build a government-wide commitment to the ESA which should lead to better land use planning policy which enhances the future of endangered species and their habitat. A unified voice and unified commitment will stop imprudent government decisions.

This strategy will also reduce the practice of proponents playing one ministry's goals against another ministry's duty to enforce the ESA. This will save time and money.

6. Overall Benefit Permits

Overall benefit permits should be quantitative with established and measurable goals.

The present system is subjective and not regulated to assess failure or success. Failure should be subject to financial penalties. Success should be rewarded.

The proponent must provide scientific proof that their mitigation plan will be successful and endangered species and their habitat will be protected for each proposed site

7. Economic Incentive Program

MNR should develop an economic incentive program to encourage the enhancement and protection of endangered species and their habitat for both private land and crown land.

The present proposal for Safe Harbour is unclear and uncertain. Economic incentives, combined with true stewardship agreements will work more efficiently.

8. Exemptions for already approved or planned projects

Government support of preapproval assumes that all activities at all development sites will affect species and habitats equally. Science and traditional knowledge does not support this assumption. In fact, it refutes this assumption.

Preapproval of credit in the used car business may make sense, but arbitrary decisions that affect species survival do not.

The foundation of any business risk or political decision must be based on the law. If a project cannot meet the statutory standards and regulatory standards, it is unlawful and should not be pursued.

Many of the preapproved projects were implemented after the ESA became law. To ignore the potential risk of the ESA in a business plan presumes that cabinet and the regulators will exempt the business from the law.

While, at first glance, exemption appears to reduce financial risk, in the end future reputational and financial liability may override this perceived preapproval advantage.

To protect endangered species and their habitats MNR and Ontario's political leadership must insist that a precondition for approval is that endangered species and their habitats will be protected under law.

The goal of any decision is to do it right.

Continued governmental support of preapproval is imprudent.

9. Public Safety

Public safety, of course, is a key consideration in a critical repair crisis. It is our experience that the current procedure already exempts proponents from ESA standards as well as other standards to complete repairs.

We experienced such an incident this past summer when OPG had to make repairs to a dam on the Wanapitei River. We commend them for advising us in time to notify all of our members and many tourists in the area to protect physical safety. However, since no regulations were applicable, we have no information to determine what toxins or heavy metals were released into the river which may affect endangered species or public health in the future.

10. NHIC data

Using NHIC data as the sole source of species location is not acceptable. Due to the vast area of Northern Ontario and the lack of scientific knowledge at all sites, using NHIC only would expose many endangered species and their habitat to encroachment and destruction.

A proposed site must be investigated and species documented before development.

In our January 18, 2013 submission, we clearly stated that the proposed changes in EBR 011-7696 will be a step back in time for Ontario. If enacted, species decline will continue at an alarming rate and the future costs to society will be unacceptable.

The ESA represents the start of the Ontario government's commitment to creating a clean slate for the public and developers so that we do not make the same mistakes we have made in the past at the expense of Ontario's natural capital.

To institute EBR 011-7696 as it now stands would be irresponsible.

If the MNR is to meet its own Statement of Environmental Values and support its statutory responsibility, EBR 011-7696 should be withdrawn and repositioned to support responsible implementation of the ESA.

Sincerely yours



Jim Rook
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CC: Ontario Rivers Alliance
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