

Ministry of Environment, Conservation and Parks

**Proposed amendments to the Environmental Assessment
Act to remove Regulatory Duplication of Forest
Management requirements in Ontario**

Ontario Forest Industries Association Submission
February 18, 2020

Recommendations

1. While ensuring MNRF maintains responsibility for non-planning conditions, MECP should proceed with the proposal to exempt forest operations from the EAA and non-application of Declaration Order MRNF-75.
2. MECP should proceed with removing the option to request an Individual Environmental Assessment through this proposal.
3. Remove further duplication by establishing an industry-only Forest Sector Strategy Advisory Committee as the replacement for the Provincial Forest Policy Committee (PFPC).
4. Re-evaluate the membership and role of the Provincial Forest Technical Committee (PFTC).
5. MNRF must maintain responsibility for inventory, information and management systems, and a growth and yield program.
6. MECP and MNRF must ensure no further consultation or negotiation requirements will be transferred to industry.

Introduction

Thank you for the opportunity to comment on ERO Number *019-0961: Proposed amendments to General Regulation 334 under the Environmental Assessment Act to remove Regulatory Duplication of Forest Management requirements in Ontario*. For 77 years, the Ontario Forest Industries Association (OFIA) and its members, including forest practitioners, sustainable forest license (SFL) managers, biologists and technicians, have dedicated their careers to sustainable forest management. Today, our membership responsibly manages over 20 million hectares of Crown and private forests in Ontario and contributes to the 155,000 jobs and 16 billion dollars in revenue (Ontario Ministry of Natural Resources, 2019a), generated by the provincial forest sector.

On May 22, 2019, the OFIA provided a response to ERO number 013-5101, *Discussion Paper: Modernizing Ontario's Environmental Assessment Program*. This submission encapsulated our support for maintaining environmental protections, while streamlining processes, improving service standards and reducing delays. We remain supportive of your government's commitment to modernize the 50-year old Environmental Assessment (EA) process and reduce duplication by creating a one-window approach under the Ministry of Natural Resources and Forestry (MNR).

In May, the OFIA highlighted the need for industry, forest managers, and license holders to be viewed as partners in this process, as well as clarity regarding the implications of what is being proposed by the Ministry of Environment, Conservation and Parks (MECP). Since the discussion paper was posted in 2019, MNR managers have provided timely responses to inquiries and facilitated a valuable February 5th, 2020 conference call that involved MECP and forest industry. The transparency and collaboration have allowed OFIA to provide a more articulate and informed response.

After OFIA's review of MECP's proposed changes, we believe there are three key areas for discussion: litigation risk, Individual Environmental Assessment requests, and legislative and policy coverage of non-planning Declaration Order conditions. These topics are described in more detail below.

Litigation Risk

The current legislative framework has existed in some capacity since the *Crown Forest Sustainability Act* (CFSA) was passed in 1994 (26 years ago). Since then, MECP has been responsible for the class EA, while MNR has maintained responsibility for meeting the conditions of the Declaration Order through implementation of the CFSA. So, when government makes significant changes to such fundamental laws, which are central to the operations of the forest industry, there will always be a concern that this could potentially expose the sector to increased risk of litigation.

MECP and MNR must also recognize the significant body of work that was compiled and the exhaustive consultations that took place during the Class Environmental Assessment for Timber Management Hearings. These hearings took place in 15 different locations, including over 500 presenters, involved dozens of intervenors, and hundreds of support people. This was a long and

expensive process which took six years to complete and cost over \$20 million, with 70,000 pages of daily-recorded transcripts. There is some concern that this corporate memory could be lost in what MECP is proposing.

The establishment of the timber class EA, passing of the CFSA, and subsequent Declaration Order MNR-75 in 2002 were essential steps in developing the current regulatory and policy framework that the forest sector currently operates under. After 26 years of implementation through adaptive management, the CFSA, regulated manuals, and forest management guidance have been continuously refined to a point where the requirements of MNR-75 are duplicative and redundant. Additionally, this legislative redundancy prevents sensible and timely changes to modernize the regulated manuals, particularly as this government finalizes a Forest Sector Strategy.

Recommendation 1: While ensuring MNRF maintains responsibility for non-planning conditions, MECP should proceed with the proposal to exempt forest operations from the EAA and non-application of Declaration Order MRNF-75 (DO).

Individual Environmental Assessment Process

The Forest Management Planning Manual (FMPM) provides the public with an opportunity to make a request for issue resolution at any stage of FMP development, including; the proposed long-term management direction (LTMD), proposed operations in the preparation of a FMP, contingency plan, long-term FMP extension, minor amendment, major amendment, amendment to the LTMD, or an insect pest management program. Furthermore, there is a well-established 7-step process for the escalation of issue resolution from the local District Manger to the Regional Director.

The OFIA agrees with the conclusion reached in MNRF's (2019b) Five-Year Environmental Assessment Report on Forest Management regarding the Individual Environmental Assessment (IEA) process:

“The issue resolution process is used significantly during forest management planning, consequently the Individual Environmental Assessment request process conducted by MECP is adding little value to forest management planning decision making. The time required to review and make decisions on these requests caused the forest industry economic hardship and consumed MECP and MNRF staff time and resources.”

MECP has processed 115 requests since 1995 without granting a single IEA. While MECP has, on occasion, added conditions to IEA request denials, these were usually requirements that MNRF was already required to address (Ministry of Natural Resources and Forestry, 2019b).

An Ontario Auditor General (2017) report also criticized this process by stating:

“The Ministry consistently exceeds the prescribed timeframes for reviewing and deciding on public requests to bump-up (request an IEA) a streamlined (DO) to a comprehensive

assessment (IEA). The lengthy Ministry reviews cause project delays, which result in financial and nonfinancial costs to project owners”.

For the reasons mentioned above, OFIA supports removing the opportunity to request an IEA.

Recommendation 2: MECP should proceed with removing the option to request an Individual Environmental Assessment through this proposal.

Legislative and Policy Coverage of Non-Planning Declaration Order Conditions

Enclosed within this submission is an analysis completed by the OFIA comparing non-planning conditions of MNR-75 with the CFSA and a Sustainable Forest License (SFL). Our review found all forest management planning conditions within the DO are covered by the CFSA and the regulated manuals. However, non-planning conditions (e.g. monitoring, reporting, training, science, committees) are not covered under existing legislation.

Every non-planning condition within the DO begins with “MNRF shall...”, a clear indication of which party is responsible for each action. As licensees and Agents of the Crown, we believe that MNRF should continue to be responsible for these conditions post-DO. Where these conditions will be housed (e.g. a policy document like the Forest Sector Strategy, or within legislation like the CFSA and the regulated manuals) deserves more discussion and analysis between industry partners and MNRF.

Without a clear understanding of roles and responsibilities of non-planning conditions, OFIA is concerned that this could result in the downloading of obligations and costs to forest industry. We discuss the most critical conditions (without CFSA coverage) in more detail below.

Conditions 42 and 43 - Provincial Forestry Technical and Policy Committees

Condition 42 states:

“MNRF shall maintain a committee, known as the Provincial Forest Policy Committee (PFPC), whose purpose is to advise the MNRF Deputy Minister on provincial forest policy and related matters brought to the committee by the MNRF Deputy Minister.”

Ontario’s Forest Sector Strategy will be the driving force behind Ontario’s forest policy over the next decade. To ensure successful, long-term implementation of this strategy, MNRF has proposed the establishment of an Advisory Committee. OFIA believes that an Advisory Committee, comprised of forest sector representatives will be most effective, and will function similarly to the PFPC, as outlined above in condition 42; under this scenario, PFPC would become redundant and duplicative and thus, we believe it will become unnecessary.

Recommendation 3: Remove further duplication by establishing an industry-only Forest Sector Strategy Advisory Committee as the replacement for the Provincial Forest Policy Committee (PFPC).

Condition 43 states:

“MNRF shall maintain a committee, known as the Provincial Forest Technical Committee, to advise the MNRF Assistant Deputy Minister on how to ensure that MNRF Guides are kept current with respect to scientific knowledge and management practices, by acting as a review board for proposed changes to existing MNRF Guides and recommending priorities for work on new or existing MNRF Guides. The committee may also advise on other technical matters brought to the committee by the MNRF Assistant Deputy Minister.”

Current policy initiatives under the Forest Sector Strategy include the forest management guidance Technical Advisory Team (TAT), Silvicultural Implementation Direction (SID), Forest Industry Data Advisory Group (FIDAG), Provincial Forest Inventory Advisory Committee (PFIAC), Scaling Manual (SM) working group, and the Forest Management Planning Advisory Group (FMPAG). Given the breadth of technical work being undertaken by these committees, the PFTC could also be viewed as redundant and duplicative.

The PFTC may continue to serve a purpose in the final review of policy initiatives mentioned above. However, more discussion on the membership of this committee and its future should take place between industry and MNRF.

Recommendation 4: Re-evaluate the membership and role of the Provincial Forest Technical Committee (PFTC).

Condition 47 and 49 – Inventory, Information and Management Systems and the Growth and Yield Program

Both condition 47 and 49, like all non-planning conditions, begin with the phrase “MNRF shall...” indicating clear responsibility for MNRF to maintain information management systems that are required to support forest management planning and a growth and yield program.

The collection, storage, update and retrieval of forest information is a responsibility of the Crown. While we believe improvements in these phases can be made through the Forest Information Data Advisory Group (FIDAG) we are concerned by the potential for IT costs to be downloaded onto industry. MNRF must maintain the sole responsibility for this condition.

We identified five references to a growth and yield program within the FMPM but found no direction or requirements of such a program. Given OFIA’s concerns with the Silvicultural Implementation Direction (SID) project, which appears to be establishing a requirement for a growth and yield program on each management unit across the province, we believe that forest industry will inherit additional costs and responsibilities for this program, should the DO be revoked. MNRF must maintain responsibility for this condition once the DO is no longer applicable.

Recommendation 5: MNRF must maintain responsibility for inventory, information and management systems, and a growth and yield program.

Condition 56 – Negotiations with Aboriginal Peoples

Condition 56 states that “*MNRF shall*” conduct negotiations at the local level with Aboriginal Peoples whose communities are situated in a Management Unit, in order to identify opportunities and equal participation for these peoples. Part of our concern around the future of this DO condition stems from the Five-Year Environmental Assessment Report on Forest Management (2019b), which states:

“This condition requires MNRF District Managers to negotiate benefits with the local communities. MNRF’s role may now be more appropriate as a facilitator between forest industry, who holds the licence, and the local communities who wish to participate in the benefits provided through forest management planning.”

OFIA does not believe that sustainable forest license (SFL) holders and managers should be held responsible for negotiations with Aboriginal Peoples, this authority ultimately rests with the Crown.

The duty to consult is rooted in section 35 of the *Constitution Act*, 1982, and the principle of the Honour of the Crown. This requires the Crown to respect Aboriginal rights, which in turn requires negotiations with Aboriginal Peoples, to identify those rights. The Crown is obliged to consult with Aboriginal Peoples in all cases where its activities affect their asserted rights and, where appropriate, to accommodate these rights by adjusting the activities.

Ontario, as the Crown, has a legal obligation to consult with Aboriginal Peoples. Through MNRF’s review of forest management manuals and guidance and the Ministry of Environment, Conservation and Parks’ (MECP) review of the Environmental Assessment Act; there is an inherent risk of additional responsibility being transferred to SFL managers. As a result, this has the potential to add significant costs, potential complications, and future delays to the forest sector.

Forest industry has long provided and communicated employment and forest management planning opportunities to Indigenous communities. In particular, the SFL document, Processing Facility application, and associated business plans all list obligations to the holders of those documents, to develop economic benefits for these communities. Thus, paired with government consultation requirements in legislation, we do not believe that industry should be saddled with additional consultation or negotiation requirements as a result of proposed amendments to the Environmental Assessment Act. Finally, an MNRF led analysis demonstrated that condition 56 would hypothetically be covered in policy documents (i.e. the Forest Sector Strategy) upon amending the EA. OFIA strongly believes these responsibilities should be maintained in legislation.

Recommendation 6: MECP and MNRF must ensure no further consultation or negotiation requirements will be transferred to industry. This would be inconsistent with what Ontario is trying to achieve through a Forest Sector Strategy and commitment to red-tape reduction.

References:

Ontario Ministry of Natural Resources and Forestry (2019a). A Blueprint for Success: Ontario's Forest Sector Strategy DRAFT. Toronto, ON. 5 p.

Ontario Ministry of Natural Resources and Forestry (2019b). Five-Year Environmental Assessment Report on Forest Management: April 1, 2013 – March 31, 2018. Toronto, ON.

Office of the Auditor General of Ontario (2017). 2017 Annual Report: Section 3.06 Environmental Assessments. Toronto, ON.