Part 4 :
Natural Resources Conservation

Table of Contents

FORESTRY

Introduction

The management of Ontario's forests has undergone enormous changes over the past four years. Major reductions to the budgets of the Ministry of Natural Resources' forest management programs were announced in the fall of 1995. These reductions have resulted in moves to transfer many of the Ministry's responsibilities for forest management on Crown Lands to the forest industry. Discussions between the government and the industry have included the extension of the tenure of forest companies on crown lands, and the delegation of regulatory decision-making on lands under tenure to companies holding Sustainable Forest Licences (SFLs).

The1998 decisions of the Ontario Divisional Court and Court of Appeal regarding the Ministry of Natural Resources' failure to implement the requirements of the Class Environmental Assessment of Timber Management on Crown Lands and the *Crown Forest Sustainability Act*, the annual reports of the Environmental Commissioner of Ontario, and the Ministry of Natural Resources' own Forest Resources Assessments, have raised major questions regarding the degree to which the Ministry is managing the province's forests sustainably.

The government's March 1999 announcement regarding the outcome of the 'Lands for Life' process has major implications for the future of Ontario's forests. The government has stated its intention to protect 12% of the lands in the planning area from development. However, this commitment is subject to a number of major concessions to the forestry and mining industries, and other interests. With respect to forestry, the government has committed to: no long-term reduction in wood supply; no increases in the costs of the wood supply; potential exemptions for the biodiversity protection provisions of the *Crown Forest Sustainability Act* in areas where intensive silviculture is to be practiced; the potential extension of forest harvesting activities north of the 50th parallel; and $21 million in new subsidies and compensation to the forest industry.

The issue of extended tenure for forest companies was not addressed in the government's announcements, but extensions of tenure, potentially to the point of virtual ownership, appear to be implicit as a quid pro quo to industry in the 'Lands for Life' process. This would make the establishment of additional protected areas in the future extraordinarily difficult, if not impossible, without financial compensation to tenure holders. In addition, according to government statements issued on March 29, any future expansion of parks and protected areas in Ontario will require the agreement of the foresty and mining industries.

Reforms to the tax treatment of managed forests on private lands were adopted in May 1997. These improved the administration of the managed forest program, and converted the program from a tax rebate to property tax reduction. This has benefitted

landowners, but has reduced tax revenues to municipalities.

Forest Management

MNR Budgetary and Personnel Reductions

Major reductions to the Ministry of Natural Resource's forest management budget were announced in October 1995. This included a $19.1 million (47%) reduction for the implementation of the terms and conditions associated with the Class Environmental Assessment on the Timber Management on Crown Lands.[12] Funding for overall forest management activities were reduced by $45.9 million by the 1997/98 fiscal year.

The staffing changes in the Forest Management Branch of the Ministry resulting from these reductions are outlined in Table 4.1.

Table 4.1 : Changes in Human Resources in the Forest Management Branch

	1995 Person-years	1996 Person-years	Percentage Change
Policy	60	19	- 68%
Stewardship	173	127	- 27%
Operations	637	287	- 55%
Compliance	139	83	- 40%
Science and Technology	377	148	- 61%
Information Management	49	27	- 45%
Industry Services	16	16	0%
Seed and Stock Production	77	44	- 43%
Public Education	NA	NA	-
Business Infrastructure support	13	13	0%
Core Competency	0	4	-
Totals	1541	768	- 50%

Source: *Forest Management Business Plan*, Forest Management Branch, MNR, May 1996

It is important to note that while the Ministry's compliance, monitoring, science and policy functions suffered cuts in personnel of between 27% and 68%, there were no cuts in personnel dedicated to "industry services."

The Role of the Forest Industry in Forestry Management

As a result of these reductions, the Ministry stated that "Ontario's forest industries will take on more responsibility for forest management planning, forest operations, including forest renewal, collecting information about the forest, and some aspects of monitoring and compliance."[3]

The Ministry of Natural Resources Forest Management Branch's May 1996 Business plan specifically indicated that responsibility for the conduct of surveys and assessments, monitoring, inventory and data collection, conducting inspections for compliance, identifying areas where standards or guidelines have not been followed, and undertaking and paying for remedial work were to be transferred to the industry.[4] In effect, the Ministry would rely on forest company reports as its primary source of information on the state of the province's forests, and on industry compliance with Ministry requirements. Checks would be conducted by MNR staff on the basis of public complaints and periodic audits of a yet to be specified nature.[5]

A significant number of MNR district offices have been closed as a consequence of these changes. This has resulted, among other things, in the remaining staff being given responsibility for managing areas with whose history and landscape they are unfamiliar.[6]

Changes in the Forest Tenure System

The Ministry of Natural Resources is also introducing major changes to the tenure system for the forest industry. All forest management units are being transferred to Sustainable Forest Licences (SFLs), which are intended to be long-term (i.e.: 20 yeas with automatic renewal if the licence conditions have been complied with), and grant the licensee more direct control over a forest. This development has been linked to amendments to the *Public Lands Act* and the *Lakes and Rivers Improvement Act* made through Bill 25, *The Red Tape Reduction Act,* enacted in December 1998. These permit the Minister of Natural Resources to delegate his or her responsibilities and decision making authority for managing public lands to third parties.[7]

It is anticipated that the management of public lands covered by SFLs will be delegated to the licence holders, giving the licensee control over decisions regarding activities on the land in question.[8] Members of the public would interact with the licensee instead of the MNR regarding resource management and land use issues. The result would transfer effective ownership and control of public lands to SFL licence holders. A December 1996 report on discussions between the government and the forest industry regarding these transitions included a recommendation that:

> "Long term leases built from bilateral agreements between MNR and each company should be signed to ensure that the land identified above is tenured to the agreement of the holder in perpetuity, and is strongly resistant to the unpredictable land base erosion problems of previous tenure agreements..."[9]

In her 1997 Annual Report to the Legislature, the Environmental Commissioner noted that in 1997 the MNR developed wood supply agreements that would grant

companies 'compensable tenure.' In addition, the Minister has confirmed his willingness to negotiate the length of tenure, based on scientific and business principles. The Commissioner noted that the overall direction of these initiatives appeared to be in response to pressures from the forest industry for perpetual tenure, and rights to compensation if tenured lands are re-allocated to such uses as remote tourism and parks.[10]

The development of an 'enhanced' tenure system was postponed pending the outcome of the 'Lands for Life' process,[11] launched in February 1997. The recommendations of the 'Lands for Life' Regional Round Tables were tabled in October 1998, and the government's response to the Round Table recommendations was presented in March 1999.

Forest Resources Assessments

The first assessment of the province's timber supply under its new Forest Resources Assessment Policy (FRAP), was released in June 1997. The assessment concluded that the province's timber supply was projected to decline substantially over the next 60 years, while industrial demand for timber would continue to rise. The assessment also laid out some possible approaches to the problem. These included the creation of more replanted forest by dealing with the 'backlog' of harvested areas that have not been restocked; opening more Crown lands to timber harvests, including areas north of where timber harvesting activities are currently permitted; increasing investments in silviculture; improving forest management decision-making; and accepting limitations on timber supply.[12]

Forestry, Environmental Assessment and the *Crown Forest Sustainability Act*.

In 1994, the Environmental Assessment Board delivered its decision on the Class Environmental Assessment of Timber Management on Crown Lands. [13] The changes in the structure and mandate of the MNR's Forest Management Branch have raised serious concerns about the Ministry ability to comply with the terms and conditions of the Board's decision. These concerns are compounded by the Bill 76 amendments to the *Environmental Assessment Act*, which permit the Minister of the Environment to amend Environmental Assessment Board decisions in light of changed circumstances or new information.[14]

MNR Roadless Areas Policy

The Board's decision required the MNR to develop and implement a policy on roadless areas by May 1997. The Ministry released a draft policy in April 1997.[15] However, it stated that roadless areas would only be required to exist within wilderness parks. It did not indicate that the MNR plans to designate them anywhere else. This approach was criticized as being inconsistent with the intent of the Board's decision, which was to ensure the establishment of roadless areas within managed forests, as well as protected areas.[16]

The MNR Policy was finalized in May 1997, but gave little attention to maintaining roadless wilderness areas outside of parks.

Forest Management Planning Manual

On September 11, 1996, two environmental organizations initiated a lawsuit seeking an injunction against the logging of old-growth pine forests in Temagami and elsewhere in the province, challenging the legality of the Ministry's forest management plans on the basis of the MNR's failure to publish and implement a Forest Management Planning Manual and ensure the sustainability of forests, as required by the *Crown Forest Sustainability Act*. The action also alleged that the government was in violation of several conditions of the Environmental Assessment Board's 1994 decision on Timber Management on Crown Lands.[17]

The Ministry announced the cabinet's approval of the Forest Management Planning Manual on November 4, 1996,[18] shortly after the environmental organizations were granted standing to pursue their case in the courts.The government's decision was posted as an exception to the public notice requirements of the Environmental Bill of Rights (EBR) on the basis that the Ministry had done equivalent public consultations. The Ministry's action in this regard was strongly criticized by the Environmental Commissioner in her 1996 Annual Report.[19]

Ontario Divisional Court Timber Management Decision

In February 1998 a decision of the Ontario Divisional Court declared three Northern Ontario forest management plans to be "of no force and effect." The decision was a result of the action initiated in September 1996 by the Algonquin Wildlands League and others. The Court concluded that MNR had failed to comply with the requirements of the *Crown Forest Sustainability Act* and the decision of the Environmental Assessment Board in the Class Environmental Assessment of Timber Management on Crown Land in: approving work schedules without proof that the forest would managed sustainably; approving plans which lacked any sustainability indicators; and arbitrarily extending timetables for phasing in new standards. At the request of the two environmental groups, the Court gave the province 12 months to bring the Elk Lake, Upper Spanish and Temagami plans into compliance with the Act.[20] This was intended to minimize the impact of the MNR's failure to comply with the law on forestry workers and communities.

In its decision, the Court stated that:

> "...By omitting from the plans the process and measurements at the heart of the new statute, the Ministry has failed in a very fundamental way to comply with the statute... By ignoring the requirements of the Manual in respect of the impunged plans and work schedules, the Ministry has undermined the object and purpose of the statute...
>
> "The nature and quality of noncompliance is extreme. This is not a case of honest disagreement as to whether the Ministry complied with the manual in

approving the plans. The Ministry did not even have the Manual ready before it approved the plans...

"Failure to comply with the Manual undermines complete the object and purpose of the legislation and works serious prejudice to the public interest in the sustainability of the Crown forest for future generations."[21]

An effort by the Ministry of Natural Resources and the forest industry to amend the judgement on the basis of the impact of the cuts to the Ministry's budget was rejected by the Court on May 20, 1998, with a solicitor/client cost award to the applicants, represented by Sierra Legal Defence Fund.[22] Once finally assessed, the award will likely exceed $100,000.[23]

The Divisional Court's decisions striking down the three plans, providing the Ministry a one year grace period within which to revise the plans, and making a cost award to the applicants were upheld by the Ontario Court of Appeal in October 1998.[24] The Appeal Court concluded that:

"We agree with the Divisional Court's conclusion that the plans in question, prepared in accordance with s2.1 of Appendix VIII (of the Manual) clearly fell short of the sustainability standards required by the Act. In this regard, we have no reason to question the findings of the Divisional Court that the impugned plans failed to address issues such as Crown forest diversity objectives, landscape patterns, habitat for animal life and social and economic objectives, all of which were necessary to the requirements of s.68(5) of the Act."[25]

The three forest management plans were replaced by the Ministry by April 1999, and there are indications that the Ministry will re-draft other timber management plans to bring them into compliance with the requirements of the Timber Management Environmental Assessment Decision and the *Crown Forest Sustainability Act*.[26]

The February 1998 Court decision was followed by the publication of report by Wildlands League and Sierra Legal Defence Fund revealing a pattern of serious failure to enforce environmental regulations applicable to the forestry industry in Algoma Highlands.[27] An application for investigation was made under the *Environmental Bill of Rights* that the Ministry of Natural Resources investigate a sampling of 12 of the most recent violations in the highlands.

The Ministry of Natural Resources carried out an investigation and published its findings in November 1998. The investigation team uncoverd a number of impacts resulting from poor forestry practices including: loos of stream banks, stream widening, increased stream temperature, algea growth, rutting, loss of stream cover, in stream accumulation of debris and debris dams, and the burial of streams and wet areas.The Ministry did not press charges in relation to the alleged violations. However, the investigation team recommended significant changes to the Ministry's forest management and enforcement practices. A Repair Order was also issued under the *Crown Forest*

Sustainability Act.[28]

MNR Cross Lake Road Conviction

On December 11, 1996, a coalition of environmental groups filed a request for investigation with the Environmental Commissioner regarding the approval of a logging road by the MNR in the Cross Lake area of the Temagami Region in contravention of the *Environmental Assessment Act*.[29] Subsequently, in April 1997 the Ministry of Environment and Energy laid charges against the MNR for this action.[30] In September 1997, the Ministry of Natural Resources submitted a plea of guilty with respect to the charges and was fined $1,200 for its violation of the Act.[31]

The fine was imposed despite the fact that the Crown prosecutor and the defendant (MNR) had jointly submitted that there should be no fine. The Court accepted arguement from the intervenor environmental groups that the government should be treated like any other offended and not afforded special treatment.

Bill 26 Amendments to the *Forest Fires Prevention Act*

Bill 26, *The Government Savings and Restructuring Act, 1996*, amended the *Forest Fires Prevention Act* to repeal the provisions requiring that: a permit be obtained to light fires (other than for cooking or warmth) or to ignite fireworks; that a forest travel permit be obtained to enter areas designated as restricted travel zones due to the risk of forest fires; and that a work permit be obtained to carry on logging, mining, industrial operations, clear land, construct a dam, bridge, camp or operate a mill in or within 300 meters of a forest or woodland.

As with the Bill 26 amendments to the *Public Lands Act* and the *Lakes and Rivers Improvements Act*, the statutory requirements for these permits were replaced by regulations made by the Lieutenant-Governor in Council in November 1996. These removed permit requirements for burning wood, brush, and wood waste, in piles not more than 2 metres across and high, and more than 2 metres from flammable materials, burning up to 1 hectare of grass of leaves, incinerators, and activities such as mining, logging, land clearing, dam construction, or mill operations that result in the accumulation of slash or debris. Permits continue to be required for industrial slash pile burning, prescribed burns for site preparation or ecological maintenance, and other fires.[32]

Re-instatement of the Managed Forest Tax Rebate

The re-instatement of the tax rebate was announced by the Minister of Natural Resources on February 9. 1996. The program permitted a 75% rebate on forest lands where a management plan has been developed by the landowner. Management plans were to include forestry activities, the protection of wildlife habitat, flood and erosion control and water resources management as well as harvesting.

The program was converted into the establishment of a new property class with a tax ratio of 0.25 of residential rates for managed forest lands, as part of a broader tax reform package for farm, conservation and managed forest lands enacted through Bill 106, *The Fair Municipal Finance Act, 1997,* in May 1997. The changes have benefitted landowners, but have also reduced tax revenues to municipalities.

Disposition and Sale of Crown Lands

Over the past three years, the MNR has accelerated its efforts to sell public lands that are "no longer needed" and are not "ecologically significant." The Environmental Commissioner for Ontario reported that in 1995-96 the Ministry sold 151 properties with a market value of more than $4 million. The MNR's current target for the sale of Crown land is currently approximately $5 million/yr.[33]

In her April 1998 report to the Legislature, the Environmental Commissioner expressed concern that proposed amendments to the *Public Lands Act,* which were ultimately adopted through in December 1998 through Bill 25, the *Red Tape Reduction Act, 1998*, would remove limits on the maximum size and minimum price of parcels of public land for sale. Other changes to the Act delegated the power to authorize the sale of public lands from the Lieutenant-Governor in Council to the Minister of Natural Resources.[34] The Commissioner also noted that the EBR public notice and comment requirements do not apply to the sale of public lands.[35]

'Lands for Life'

The 'Lands for Life' process was initiated in February 1997. The process was intended to allocate uses for public lands in the central region of Ontario, an area of 46 million hectares. Under the program, the Ministry of Natural Resources divided central Ontario into three large planning areas (Boreal West, Boreal East, and Great Lakes-St Lawrence). Regional round tables, one in each planning area, were to draft recommendations on how land and resources in their region should be allocated. The members of the Round Tables, who had to be residents of their area, were appointed by the Minister of Natural Resources. Three major land-uses were identified for the purposes of the process: natural heritage protection, which included parks and protected areas; remote tourism areas; and general industrial use, including forestry and mining. The Round Tables were originally scheduled to make their recommendations to the Minister of Natural Resources by March 1998.

In her April 1998 Annual Report to the Legislature, the Environmental Commissioner noted that the MNR's previous land use planning process for the region took more than 10 years to complete. The Commissioner also expressed concerns that the Round Tables' tight schedule did not allow MNR to enough time to compile detailed analyses of potential natural heritage areas, or to identify existing old growth forests.[36] The timelines for the delivery of the Round Table Reports were subsequently extended by the Minister of Natural Resources.

The Round Table reports were delivered to the MNR in October 1998. The reports recommended only a 1.6% increase in the amount of land classified as protected areas in the lands covered by the lands for life process. The Round Tables also recommended that 79.9% of the Crown Land in the Boreal West planning area, 94.7% of the Crown Land in the Boreal East planning area, and 48.9% of the Crown Land in the Great Lakes St. Lawrence planning area to designated for 'general' (i.e. industrial) use.[37]

The government announced its response to the recommendations of the 'Lands for Life' Round Table Reports in March 1999, stating its intention to protect 12% of the lands in the planning area from development. This was a significant increase over current levels and the recommendations of the Round Tables.[38]

However, this commitment is subject to a number of major concessions to the forestry and mining industries, and other interests.[39] With respect to forestry, the government has committed to:[40]

- no long-term reduction in wood supply;
- no increases in the costs of the wood supply;
- potential exemptions for the biodiversity protection provisions of the *Crown Forest Sustainability Act* in areas where intensive silviculture is to be practiced;
- the potential extension of forest harvesting activities north of the 50th parallel; and
- $21 million in new subsidies and compensation to the forest industry.

The issue of extended tenure for forest companies was not addressed in the government's announcements, but extensions of tenure, potentially to the point of virtually ownership, appear to be implicit as a quid pro quo to industry in the 'Lands for Life' process. This would make the establishment of additional protected areas in the future extraordinarily difficult, if not impossible, without major financial compensation to tenure holders. According to government statements issued on March 29, any future expansion of parks and protected areas in Ontario will require the agreement of the foresty and mining industries.[41]

The government's announcements were accompanied by the release of the 1999 Ontario Forest Accord, signed by the representatives of the Partnership for Public Lands,[42] the forest industry and the Ministry of Natural Resources. The Accord states that the parties agree that parks and protected areas resulting from the Lands for Life process will exclude logging, mining and hydro-electric development;[43] endorse the general mapping 12% of the planning area as parks or protected areas;[44] and to establish an Ontario Forest Accord Advisory Board to support the collaborative implementation of the Accord.[45]

The parties also agreed that the MNR would make its best efforts to obtain appropriate modifications to the Timber Class EA and *Crown Forest Sustainability Act* and its regulations in order to permit intensive forest management practices (pending more precise definition of specific requirements), and the lengthening of the term of forest management plans.[46]

WILDLIFE, WILDERNESS AND PROTECTED AREAS

Introduction

Ontario's laws, policies and institutions related to wildlife, wilderness and protected areas have under gone a complete restructuring over the past four years. The changes in the MNR's approach to Forest Management, described in the following chapter, have major implications for wildlife and wilderness conservation in the province, as well.

The government's approach to fish and wildlife issues has been almost exclusively concerned with the interests of sport hunters and fishers. These interests have been given an overwhelming influence over the province's fish and wildlife policies through the Fish and Wildlife Advisory Board and the dedication of Fishing and Hunting licence fees to programs that reflect sport fishing and hunting interests. The role of sport fishing and hunting interest groups in the direct delivery of fish and wildlife programs has also grown, as illustrated by the MNR/Ducks Unlimited wetlands management agreement and the transfer of hunter education and licencing programs to the Ontario Federation of Anglers and Hunters. The one notable exception in this regard has been the January 1999 cancellation of the Ontario spring bear hunt.

The new *Fish and Wildlife Conservation Act*, enacted in December 1997, contains provisions for the protection of non-game species and wildlife in captivity. However, it also provides a framework for the continued transfer of responsibility for the operation of the province's fish and wildlife programs to non-governmental actors.

Major reductions have been made to the budget for Ontario's system of Provincial Parks. The parks system is under intense pressure to increase utilization and revenues. This is leading to actions which conflict with the goal of preserving and protecting Ontario's natural and cultural heritage.

The expansion of Wabikimi Provincial Park, begun in 1992, was completed in July 1997.

Large areas of the Temagami Region in Northeastern Ontario were re-opened to logging and mining activities by the government in June 1996, including a number of areas that the Temagami Comprehensive Planning Council had recommended be protected from development. Parts of the Temagami region were re-opened for mineral staking in the fall of 1998.

The government announced its response to the recommendations of the 'Lands for Life' Round Table Reports in March 1999. The 'Lands for Life' process had been established in April 1997 to determine the future uses of public lands in Central and Northern Ontario, an area encompassing 47% of the province's land area. The government stated its intention to protect 12% of the lands in the planning area from development, a

significant increase over current levels and the recommendations of the Round Tables.

However, this commitment is subject to a number of major concessions to the forestry and mining industries, and other interests. In the case of mining, according to statements issued by the Ministry of Northern Development and Mines, mineral tenure in new parks and protected areas is to be maintained, prospecting and exploration permitted in these areas, and land 'borrowed' from parks for mining purposes if significant mineral deposits are found. More than $20 million in new subsidies to the mining industry are also to be provided. These arrangements were confirmed by the government in July 1999.

With respect to forestry, the government has committed to: no long-term reduction in wood supply; no increases in the costs of the wood supply; potential exemptions for the biodiversity protection provisions of the *Crown Forest Sustainability Act* in areas where intensive silviculture is to be practiced; the opening of the region north of the 51th parallel to logging activities; and $21 million in new subsidies and compensation to the forest industry. The issue of extended tenure for forest companies was not addressed in the government's announcements, but extensions of tenure appear to be implicit as a quid pro quot to industry in the 'Lands for Life' process.

The government's 'Lands for Life' announcements also indicate any future expansion of parks and protected areas in Ontario will require the agreement of the forestry and mining industries. Commercial fur harvesting and sport hunting and fishing are to be permitted in most new protected areas, consideration given to the expansion of hunting in existing parks. Finally, the government's announcements failed to address the rights and interests of First Nations and Metis people in the planning area.

Forest Management and Biodiversity

The changes in the Ministry of Natural Resources' approach to Forest Management, outlined in the following chapter, will have major implications for wildlife and wilderness conservation in the province, particularly with respect to the consideration of biodiversity conservation in forest management.

Bill 26 Amendments to the *Game and Fish Act*

Bill 26, *The Savings and Restructuring Act, 1996*, enacted in January 1996, amended the *Game and Fish Act* to permit the establishment of a separate account to hold the monies arising from activities such as fees collected or licenses issued under the *Act* (i.e. fishing and hunting license fees). Under the amendments, funds held in this separate account may be directed to the Minister or any person specified by the minister if it is "used for the management...of wildlife or fish populations..." or if the "payment will be used for a matter related to the activities of people as they interact with or affect wildlife or fish populations..." It can also be used to refund fees or royalties.

The Bill 26 amendments also provided for the establishment of an advisory

committee by the Minister to oversee the account and report on it annually to the Lieutenant-Governor in Council and the Legislature. In February 1996 the Minister of Natural Resources announced the establishment of the dedicated Fish and Game Fund provided for by the Bill 26 amendments to the *Fish and Game Act*.

The MNR's directions for Fish and Wildlife management were provided in its June 1996 Business Plan. The plan was intended to deal with the consequences of "expenditure reduction and government downsizing" and incorporated the dedication of the Fish and Game Fund.[47]

The plan outlined a major shift in the delivery of services, and licensing operations to non-governmental agencies and the private sector. Field assessment activities (i.e. wildlife monitoring and research) were to be "severely" curtailed, response to nuisance animal issues "divested" and direct involvement in the delivery of Remedial Action Plans on the Great Lakes "significantly" reduced.

The Fish and Game Fund was earmarked to replace the elements of the MNR's wildlife budget lost to budgetary reductions. Non-fish and wildlife related compliance (i.e. natural heritage conservation) efforts and costs were to be funded out of other MNR programs, although these were not identified.[48]

Serious concerns were expressed that the Fund would be used exclusively for the purpose of managing game species, and that individuals and organizations concerned with non-game species would be excluded from the Advisory Committee. There were also concerns that the creation of a dedicated fund would facilitate the "privatization" of fish and game management in the province.[49] The Fish and Wildlife Advisory Board was appointed in July 1996, and is dominated by representatives of sport fishing and hunting interests.[50]

The MNR's Fish and Wildlife Business Plan also indicated that there was to be greater involvement of "clients" in policy and program development.[51] This "client-centred" orientation has been manifested in a number of ways over the past few years. Examples have included the following:

Opposing the Phase-Out of Lead Shot

In a February 1996 speech to the Ontario Federation of Anglers and Hunters, the then Minister of Natural Resources stated that he opposed the rapid phase-out of lead shot from waterfowl hunting proposed by the federal government, and requested exemptions from the ban for woodcock hunters and upland hunters.

Ducks Unlimited Wetlands Management Agreement

In April 1997, the Minister of Natural Resources signed a "perpetual" agreement between the province and the hunting and conservation organization Ducks Unlimited. The agreement commits the Ministry to:

- consult with Ducks Unlimited in matters relating to the development of policy, programs and legislation that may affect wetlands and the delivery of wetland

conservation initiatives;

- offer 99 year agreements to Ducks Unlimited for Crown lands on which wetland habitat restoration projects will be located;
- register conservation easements on the property before the sale of Crown lands to protect wetland values and the interests of Ducks Unlimited; and
- invite Ducks Unlimited to participate in resource planning initiatives for Crown and private lands that may affect wetlands conservation projects.

The agreement also specified roles and responsibilities for each organization in the areas of communications, environmental reviews, science transfer, information management and administration.

The agreement was unusual in that it appeared to give a private organization, whose mandate is to promote the sporting interests of its members, a privileged place in the Ministry's policy development and planning processes, and in the disposition of Crown lands.

Lowering of Minimum Age for Hunting with a Firearm

In September 1998, the Ministry of Natural Resources lowered the minimum age for hunting with a firearm from 15 to 12, under the "Hunter Apprenticeship Safety Program."[52]

MNR Delegation of Hunter Training and Licencing

In February 1999, the Ministry of Natural Resources announced that it was delegating its hunter training and Licencing programs to the Ontario Federation of Anglers and Hunters. Under the Agreement, the Federation will be paid a fee of between $300,000 and $350,000 over the next five years.[53]

The Fish and Wildlife Conservation Act, 1997

The *Fish and Wildlife Conservation Act* was enacted in December 1997. The Act replaced the existing *Game and Fish Act*. The new Act included the following elements:

- provision for the protection and management of both game and "specially protected" species, at all life stages and to whole or parts of members of species regardless of place of origin;
- provisions dealing with wildlife in captivity;
- protection for black bears, including prohibitions on possession of a black bear gall bladder separated from the carcass, interference with black bear dens or bears in their dens;
- strengthened enforcement provisions;
- greater discretion for the Minister to make regulations previously made by the cabinet;

- provision for property owners to hire animal control agents to deal with nuisance wildlife; and
- provisions to "facilitate" new business relationships with the private sector, to assist in fish and wildlife management.[54]

The Act and the regulations made under it came into force on January 1, 1999.

Concerns were expressed that the legislation continued to advance the privatization of fish and wildlife resource management, lacks the legal mechanisms necessary to protect wildlife, allows for a wide range of ministerial discretion on the application of the act, defines "aquaculture" but does not define "conservation", limits the investigation of hunting, fishing and trapping activities, and was not strong enough to prevent the trafficking of animal parts.[55]

Wildlife Management Expenditures

A one-time expenditure of $10 million to improve fish and wildlife management was announced in the May 1998 budget. [56]

Provincial Auditor's 1998 Annual Report.

In November 1998 the Provincial Auditor tabled his Annual Report to the Legislature. The report was highly critical of the Ministry's fish and wildlife programs, concluding that:

- the Ministry had not developed proper effectiveness measures to assess the program's success in achieving the sustained development of the province's fish and wildlife resources;
- the Ministry did not have adequate policies in place for the management of big game species (moose, deer and bear); and
- information from the assessment of fish populations and other data were often not available to assist management in managing regeneration, stocking and harvesting.[57]

Spring Bear Hunt Cancellation

On January 15, 1999, the Minister of Natural Resources announced the cancellation of the spring bear hunt. The hunt would have operated between April 15 and June 15. The hunt was cancelled to prevent the orphaning of bear cubs by the accidental shooting of mother bears.[58] A compensation package of for outfitters of $250 per hunter for the 1999 season was announced by the Ministry of Natural Resources in March 1999. A legal challenge to the cancellation of the hunt by the Ontario Federation of Anglers and Hunters, and the Northern Tourist Outfitters' Association, was rejected in May 1999. However, in July 1999 the government announced the extension of the fall bear hunt by two weeks. [59]

Provincial Parks

The provincial parks system as been heavily affected by the "Common Sense Revolution." Major reductions in the operating and capital budget for the provincial parks system were announced in the fall of 1995 and the government's April 1996 budget.

Provincial Park Status

In its April 1996 business plan, the Ministry of Natural Resources announced that 15 parks were targeted to be "no longer operated by MNR" (see Figure 4.1).

Batchawana Bay	Obatanga	Middle Falls
John E. Pearce	Pakwash	Potholes
Lake Nipigon	Peche Island	The Shoals
Lake on the Mountain	Peter's Woods	Tidewater
Mark S. Burnham	Port Bruce	Missinaibi

Figure 4.1 : Preliminary List of Provincial Parks to be no longer operated by the MNR

A further 12 parks (See Figure 4.2) were proposed to be operated with "partners" (i.e. private sector operators).[60]

Serpent Mounds Provincial Park was returned to the First Nation which owns the land on which the park is located in April 1996.[61] The Ministry entered into an operating agreement with a First Nation regarding Lake Nipigon Provincial Park in June 1997.[62] The deregulation and disposal of Peche Island Provincial Park was proposed in January 1999. Interest in acquiring the property as a park has been expressed by the City of Windsor.[63]

With the exception of Peter's Woods,[64] none of the remaining parks have been closed, although service has been cut back in some cases to save costs, and in others local communities have agreed to assist in operating parks.[65]

Caliper Lake	Kap-Kig-Iwan
Driftwood	Lake of the Woods
Fushimi Lake	Marten River
Greenwater	Mississagi
Inverhuron	Ojibway
Ouimet Canyon	Windy Lake

Figure 4.2 : List of Provincial Parks to be co-operated by the MNR and private sector partners.

"Ontario Parks" and Revenue Generation

On May 1, 1996 of the creation of a new organization named 'Ontario Parks' was announced. Its mission was "to improve the delivery of programs and services in key parks to increase revenues and, in turn, sustain other parks." The framework included the creation of a special purpose account for retaining park revenues (i.e. fees, licenses, permits and rentals). In addition, a "board of directors" was to be appointed to advise the Minister of Natural Resources on the management and operation of the provincial parks system. It was to include representatives from the environmental, tourism, business, finance and education sectors.[66] The Board was appointed in September 1997.

The overall goal of the "Ontario Parks" program was to increase cost recovery on operating and capital expenditures from the present 45% to 70% over a five year period, with an increase in revenues from $15 million to $20 million. The long-term objective was to be to increase the financial self-reliance of the provincial parks system, and to operate the system "more like a business." The contracting out of services within provincial parks, such as road and ground maintenance, garbage disposal, janitorial services and snow removal were said to be under consideration.[67]

The provincial government stated that "the protection of significant elements of our natural and cultural landscape" and the provision of "strong leadership in natural and cultural protection" were to remain important objectives of the parks program.[68] However, the focus on revenue generation in the 'Ontario Parks' strategy has prompted expressions of concern that it may compromise the natural heritage protection mandate of the provincial parks system.[69] The Ministry's 1998-99 Business Plan, for example, clearly emphasized increasing the level of use of provincial parks.[70] No significant changes to legislation have been proposed or enacted to provide a clearer protection mandate to Ontario Parks. This is in contrast to the ecological integrity provisions contained in the *National Parks Act,* legislation in other provinces.

Concerns have also been raised regarding proposals for large scale recreational developments within parks which threaten natural and ecological integrity values. Proposed developments in Bronte Creek and Samuel de Champlain provincial parks have been specifically cited as being problematic in this regard.[71]

Bill 36 Amendments to the Provincial Parks Act

Amendments to the *Provincial Parks Act* to implement the 'Ontario Parks' structure were enacted in June 1996 as part of Bill 36, the *Ministry of Natural Resources Statute Law Amendment Act*. The amendments permit park managers to enter into agreements with private partners, permit the Minister of Natural Resources, rather than the Lieutenant-Governor in Council, to set fees and charges related to the operation of provincial parks. In addition, the Bill dedicated all revenues generated by the parks system to the operation of provincial parks. Finally, the amendments permit the Minister of Natural Resources to authorize "any person" take on duties or powers that may be required to ensure the operation of a provincial park.

Nature's Best

In February 1997, the MNR announced the creation of 4 new provincial parks, 5 park expansions and 18 new conservation reserves, totalling 77,500 hectares, under a program entitled *Nature's Best*.[72] Although this announcement was welcomed by environmental and conservation groups, there were concerns regarding its relationship to the wider *Lands for Life* land use planning program (described below) announced in April 1997. [73]

Wabakimi Provincial Park Expansion

In July 1997, the MNR officially announced the new boundary of Wabakimi Provincial Park, north of Armstrong, making it the second largest park in Ontario. The park was expanded from 155,000 hectares to 892,061 hectares. The review of the boundary started in 1992.

Temagami

On November 17, 1995, the Ontario Court, General Division, lifted the caution imposed in 1984 on the land titles for 110 townships in the Temagami region of Northeastern Ontario as a result of an aboriginal land claim. At the time, the Attorney-General stated that the government was "committed to the orderly re-opening of the land" for forestry and mining operations.[74] A land use proposal for the area was submitted to the government by the Temagami Comprehensive Planning Council in March 1996. The Council recommended that 56% of the area's old-growth red and white pine forests be opened for logging and that "the majority of the land base must be kept open for exploration and mineral development." [75] However, the report also recommended that a number of ecologically significant areas be protected.[76]

In response to the Council's report, the Minister of Natural Resources stated that, while acknowledging environmental concerns, the government wanted to "move as quickly as possible" to allow for increased logging and mining in the area.[77] On June 27, 1996, the Minister announced the government's final decision regarding land-use in the region.[78] While accepting the bulk of the Planning Committee's recommendations, the government opened to mineral exploration a number of areas which the Committee had recommended be protected, most notably, in the headwaters of the Lady Evelyn River System.[79]

The government's decision prompted a "rush" when the area was opened for the staking of mining claims on September 17.[80] The government's actions also resulted in widespread protests, culminating in 62 arrests at a logging road blockage between late August and early October. The government's policies regarding Temagami were subsequently criticized in a resolution of the International Union for the Conservation of Nature (IUCN) meeting in Montreal in October 1996.[81] Parts of the Temigami area, including the Skyline reserve, were re-opened for mineral claim staking in October 1998.[82]

Temagami and MNR Compliance with the Timber Class Environment Assessment and the Crown Forest Sustainability Act

The protection for old growth white and red pine forests in the Temigami region was sought as part of the legal action initiated by the Sierra Legal Defence Fund, Wildlands League and the Friends of Temagami, regarding the MNR's compliance with the requirements of the *Crown Forest Sustainability Act* and the 1994 Terms and Conditions of the Class Environmental Assessment of Timber Management on Crown Lands, in September 1996.[83]

The groups' specific application for an injunction against the logging of forests in the Temagami region was rejected in October 1996.[84] However their overall claim regarding MNR compliance was accepted by the Ontario Divisional Court in February 1998. The Court gave the province 12 months to bring the Elk Lake, Upper Spanish and Temagami plans into compliance with the Act.[85] This decision was upheld by the Ontario Court of Appeal in October 1998.[86]

The Cross Lake Road

On December 11, 1996, a coalition of environmental groups filed a request for investigation with the Environmental Commissioner regarding the approval of a logging road by the MNR in the Cross Lake area of the Temagami Region in contravention of the *Environmental Assessment Act*.[87] Subsequently, in April 1997 the Ministry of Environment and Energy laid charges against the MNR for this action.[88] In September 1997, the Ministry of Natural Resources submitted a plea of guilty with respect to the charges and was fined $1,200 for its violation of the Act.[89]

Conservation Lands Taxation

Significant changes to the property tax assessment regime for conservation, managed forest and farm lands were made through the *Fair Municipal Finance Act*, passed in May 1997. The reforms converted existing rebate programs into either an exemption from property taxation (conservation lands) or a new property class with a tax ratio of .25 of residential rates (farm and managed forest lands). Conservation lands are defined as endangered species habitat, areas of natural and scientific interest (ANSIs), provincially significant wetlands (classes 1-3), Niagara Escarpment natural zones, and lands which contribute to provincial conservation objects that are owned by non-profit conservation groups. Conservation Authorities are to be treated in the same fashion as any other landowner.[90]

While the announcement of the conservation lands program emphasized the need for long-term support for private landowners, in 1998 MNR staff placed a moratorium on adding new lands under the "Other Conservation Lands" portion of the program. This category was intended cover lands held for conservation purposes by land trusts and similar organizations. As a result, non-profit groups have had to pay taxes at full rates while the program is under review.

To qualify for the farm program, applicants must demonstrate that they are bona fide farmers with a certain income, and also must be memebrs of the Ontario Federation of Agriculture or the Christian Farmers' Association. This may present barriers to organic farmers qualifying for the program. A large part of the managed forest program is adminstered by the Ontario Forestry Association and the Ontario Woodlot Association. The program and its materials retain a harvest emphasis, although it is intended for conservation and recreation purposes as well,[91] and many of the approved plans have wildlife habitat protection as their primary management goal.

Disposition and Sale of Crown Lands

Over the past four years, the MNR has accelerated its efforts to sell public lands that are "no longer needed" and are not "ecologically significant." The Environmental Commissioner for Ontario reported that in 1995-96 the Ministry sold 151 properties with a market value of more than $4 million. The MNR's current target for the sale of Crown land is currently approximately $5 million/y.[92]

In her April 1998 report to the Legislature, the Environmental Commissioner expressed concern that proposed amendments to the *Public Lands Act*, which were ultimately enacted in December 1998,[93] would remove limits on the maximum size and minimum price of parcels of public land for sale. The amendments also delegated the power to authorize the sale of public lands from the Lieutenant-Governor in Council to the Minister of Natural Resources.[94] The Commissioner noted that the EBR public notice and comment requirements do not apply to the sale of public lands.[95]

The sale of public land will make the establishment of protected areas in the future more difficult, as the lands would have to be bought back, at market rates, in order to be incorporated into these areas. It will be important that that landscape, rather than just site-based assessments be made before lands are disposed of, to ensure the protection of natural heritage values.

Lands for Life

The 'Lands for Life' process was initiated in April 1997. The process was intended to allocate uses for public lands in the central region of Ontario, an area of 46 million hectares. Under the program, the Ministry of Natural Resources divided central Ontario into three large planning areas (Boreal West, Boreal East, and Great Lakes-St Lawrence). Regional round tables, one in each planning area, were to draft recommendations on how land and resources in their region should be allocated. The members of the Round Tables, who had to be residents of their area, were appointed by the Minister of Natural Resources. The three major land-uses identified in the process were: natural heritage protection, which included parks and protected areas; remote tourism areas; and general industrial use, including forestry and mining. The Round Tables were originally scheduled to make their recommendations to the Minister of Natural Resources by March 1998.

Serious concerns were raised about the 'Lands for Life' process. These included the short time lines for such a massive planning undertaking, the fairness of the public consultation process, and the quality of the information made available to the public. Specific concerns included the lack of representation from members of the public from outside of the planning areas themselves, the lack of input from Southern Ontario, the weighting of the Round Tables' membership in favour of resource industries, and the lack of specific guidelines or policies on how the Round Tables are to arrive at their conclusions.[96]

In response to these concerns, the Ministry of Natural Resources increased consultation in Southern Ontario, issued some guidelines to the Round Tables, and extended the time line for the Round Tables to draft their recommendations until June 1998. However, in her April 1998 Annual Report to the Legislature, the Environmental Commissioner noted that the MNR's previous land use planning process for the region took more than 10 years to complete. The Commissioner also expressed concerns that the Round Tables' tight schedule did not allow MNR to enough time to compile detailed analyses of potential natural heritage areas, or to identify existing old growth forests.[97]

The Round Table reports were delivered to the MNR in October 1998. The reports recommended only a 1.6% increase in the amount of land classified as protected areas in the lands covered by the lands for life process.[98] The Round Tables also recommended that 79.9% of the Crown Land in the Boreal West planning area, 94.7% of the Crown Land in the Boreal East planning area, and 48.9% of the Crown Land in the Great Lakes St. Lawrence planning area to designated for 'general' (i.e. industrial) use.[99]

The government announced its response to the recommendations of the 'Lands for Life' Round Table Reports in March 1999, stating its intention to protect 12% of the lands in the planning area from development. This was a significant increase over current levels and the recommendations of the Round Tables.[100]

However, this commitment is subject to a number of major concessions to the forestry and mining industries, and other interests.[101] With respect to forestry, the government has committed to:[102]

- no long-term reduction in wood supply;
- no increases in the costs of the wood supply;
- potential exemptions for the biodiversity protection provisions of the *Crown Forest Sustainability Act* in areas where intensive silviculture is to be practiced;
- the potential extension of forest harvesting activities north of the 51th parallel; and
- $21 million in new subsidies and compensation to the forest industry.

The issue of extended tenure for forest companies was not addressed in the government's announcements, but extensions of tenure, potentially to the point of virtual ownership, appear to be implicit as a quid pro quo to industry in the 'Lands for Life' process. This would make the establishment of additional protected areas in the future extraordinarily difficult, if not impossible, without major financial compensation to tenure holders.

In the case of mining, documents released by the Ministry of Northern Development and Mines stated that:

- the government will respect the existing rights of all forms of mining land tenure in new parks and conservation areas ;
- "low impact" staking and exploration will be allowed in unclaimed areas of provincially significant mineral potential located inside new parks and conservation reserves;
- park land may be 'borrowed' for mining while substituting it with land of equal natural heritage value, and restore land to parks when mining is finished; and
- more than $20 million in new subsidies to the mining industry are to be provided.[103]

According to government statements issued on March 29, the establishment of new protected areas will require "mutual agreement" among the minerals industry, the forest industry and the Partnership for Public Lands.[104] This would effectively provide the forest and mining industries with a veto over any future expansion of parks and protected areas in Ontario. The government's statements also indicate that commercial fur harvesting and sport hunting and fishing are to be permitted in most of the new protected areas.[105]

It is important to note that elements the Ministry of NorthernDevelopment and Mines' announcements on March 29 regarding mining directly contradicted provisions of the 1999 Ontario Forest Accord, signed by the representatives of the Partnership for Public Lands,[106] the forest industry and the Ministry of Natural Resources. The Accord stated that mining would be excluded from parks and protected areas,[107] provided for interim protection from mining activities for areas proposed as parks or protected areas,[108] and stated that the Ontario Forest Accord Advisory Board would develop a strategy for additions to the parks and protected areas system.[109]

It has been pointed out that the protection of 12% of the planning area fell short of the 15-20% minimum identified environmental and conservation organizations involved in the 'Lands for Life' process as being required to complete the system of protected areas in Ontario.[110] This is of particular concern given the difficulties for the establishment of additional protected areas in the future created by the government's commitments to the forest and mining industries in the planning area.

In addition, international criteria for the definition of protected areas specifically require the permanent exclusion of mining, logging and hydroelectric development.[111] This criteria cannot be met be the 'protected' areas announced on March 29 as, according to the government's statements, mineral exploration and mining may be permitted within them. Mining activities in 'protected' areas were excluded from the federal government's 1997 minerals and metals policy.[112] This reflects the consideration that mining operations can have unremediable environmental impacts, such as acid mine drainage, over an area orders of magnitude larger than the mine site itself.[113] Indeed, the author of a leading text on mining law in Canada has noted that:

> "Mineral exploration and mining are regarded as precisely the kinds of activity against which protection is needed, no matter how little is taken up

with actual mining."[114]

The failure of the government's announcements to address the situation of First Nations and Metis peoples in the planning area has also been identified as a major area of concern. The Canadian Environmental Law Association has pointed out that:

> "For areas affected by land claims, for any unceded lands in the planning area, Ontario will be unable, as a matter of constitutional law, to displace the First Nations' rights. First Nations also have unceded traditional rights and treaty rights in much of the planning area to hunting, fishing, food gathering ceremonial and other activities, and Ontario cannot unilaterally displace the First Nations from these rights...
>
> "The Accord and Strategy do contain rhetoric to the effect that existing rights of Aboriginal peoples are not affected by the Accord. However, there is no provision as to how traditional uses of the land will be protected; as to what will happen if planned forestry activities are inconsistent with traditional and Treaty rights to use the land. There is no recognition of the fiduciary duties owed to First Nations peoples by the province in accordance with recent Supreme Court of Canada jurisprudence such as the *Delgamuukw* decision."[115]

The 'Lands for Life' announcements have major implications for the future of public lands in Ontario. In effect, the government has proposed the partial protection of 12% of the land base. The remainder is to be assigned to industrial uses, from which it may be extremely difficult and expensive to retrieve lands for the creation of new protected areas, or to implement significant changes to forest management or land-use policies, in the future.

In July 1999, the government confirmed the following elements of its March 1999 'Lands for Life announcements:[116]

- mineral exploration will be permitted in areas have very high mineral potential in new provincial parks and conservation reserves under controlled circumstances. If a site is to be developed for a mine, the area would be removed from the park or conservatoin reserve by deregulating, and another area would be added to the park or conservation reserve to replace the deregulated area;

- existing bait fishing, commercial fishing, commercial fur harvesting and wild rice harvesting will be permitted to continue indefinitely in existing provincial parks, except in wilderness and nature reserve parks and zones in parks, where these activities would be phased out by 2010. Where these activities occur in new parks, they would be permitted to continue indefinitely except in nature reserve parks and zones;

- sport hunting would be permitted in all new provicnial parks and park additions except in nature reserve parks and zones;

- existing authorized seasonal recreation camps will be permitted to continue indefinitely in new provincial parks and will be eligible for enhanced tenure, but not purchase of land;

- existing authorized tourism facilities and recreation trails will be permitted to continue in new provincial parks, subject to management prescriptsions determined through management planning;

- the establishment of new toursim facilities may be considered in planning for individual conservation reserves; and

- efforts will be made to identify potential locations for future road crossings for forestry purposes prior to regulation of new provincial parks or conservation reserves.

The government also stated that "MNR will consider opportunities to provide additional hunting opportunities during park management planning for existing parks, including existing wilderness parks."[117]

FISHERIES AND FISH HABITAT

Introduction

A number of major changes affecting fisheries and fish habitat took place over the 1995-1999 period. In March 1996, the government adopted changes to the land-use planning process that significantly weakened the protection for wetlands and other important types of fish habitat. In November 1996, the Ministry of Natural Resources removed permitting requirements for a wide range of activities on public lands, and affecting shorelines, lakes and rivers. This was followed in September 1997 by the abandonment of the enforcement of habitat protection provisions of the Federal *Fisheries Act* by the Ministry.

The Ministry has entered into a self-monitoring agreement with the commercial fisheries industry, and has proposed similar arrangements for the baitfish industry. The Provincial Auditor's November 1998 Annual Report raised serious questions about the effectiveness of the Ministry's fish and wildlife management programs. A new *Fish and Wildlife Conservation Act*, replacing the *Fish and Game Act*, was enacted in December 1997.

Ontario's existing, naturally-occurring fish habitat and indigenous fish populations continue to be threatened in many parts of the province. Legislative, regulatory and program changes over the course of the 'Common Sense Revolution' have generally ensured that the pace of encroachment into wetlands and aquatic habitats will increase. While the province and federal government frequently sponsor remediation projects, these projects can rarely undo the kind of irrevocable changes brought by incursion of activities such as forestry, mining and land development. Looking to the future, planned legislation with enabling rights such as the 'right-to-fish' may make it extrememly difficult to limit the over-use and demise of natural fish populations.

Enforcement of the Habitat Protection Provisions of the Federal *Fisheries Act*

On September 19, 1997, the Ministry of Natural Resources announced that it was withdrawing from a 1989 agreement with the federal Department of Fisheries and Oceans to enforce the habitat protection provisions of the federal *Fisheries Act*. The Ministry stated that it would take further no action to enforce the Act in Ontario.[118]

The *Fisheries Act* contains strong provisions related to the protection of fish habitat, such as wetlands, streams and shorelines. These include a prohibition on the alteration or destruction of fish habitat without the permission of the Minister of Fisheries and Oceans.[119] Over the years, the Ministry of Natural Resources has undertaken numerous prosecutions under the Act.[120]

The Ministry of Natural Resource's action resulted from a dispute with the federal

government over the delegation of the power to authorize the alteration or destruction of fish habitat to the provinces. The provinces have sought the unconditional delegation of this power through amendments to the *Fisheries Act*. Ontario had also been seeking financial compensation for its activities related to the habitat protection provisions of the Act.

The federal government stated that it was unwilling to proceed with unconditional delegation. Amendments to the *Fisheries Act* introduced into Parliament in October 1996 would have delegated decision-making authority regarding fish habitat to the province. However, the delegation would have been subject to conditions regarding compliance with federal policies regarding habitat protection and requirements that the provinces report to the federal government and the public regarding their activities with respect to the administration and enforcement of the habitat protection provisions of the Act.[121]

When it withdrew from the enforcement of the Act in September 1997, the Ministry of Natural Resources indicated that it would resume its enforcement activities if the federal government committed to the delegation of decision-making authority related to habitat alteration and destruction, and to provide financial resources to support the Ministry's activities in relation to the Act.[122]

In addition, Environment Canada and the U.S.EPA's "State of the Great Lakes 1997" report had concluded that aquatic habitat and wetlands were in "poor" condition in the Great Lakes basin.[123] In the words of the House of Commons Standing Committee on the Environment and Sustainable Development, the Ministry of Natural Resource's action created a "huge hole in the Department's (Fisheries and Oceans) fish habitat program."[124]

As a temporary measure, the federal Department of Fisheries and Oceans brought in four federal Fisheries Officers from the Maritimes to enforce the habitat protection provisions of the Act in Ontario. These officials were to deal with the work previously handled by 215 provincial enforcement officers.[125] In May 1998, two of the four federal Fisheries Officers assigned to Ontario were withdrawn to their home regions.[126] At one point in over the summer of 1998, only one official, the Director of Conservation and Protection for the Department's Central and Arctic Region, based in Yellowknife, was available to enforce the habitat protection provisions of the Fisheries Act in Ontario.[127]

Between September and November 1988, eight federal Fisheries Officers and one Supervisor were reassigned from a number of regions to Ontario to carry out enforcement functions with respect to the habitat protection provisions of the Fisheries Act. These arrangements are designed to remain in place until March 2000.[128] In addition, in April 1998 the Department of Fisheries and Oceans announced its intention to restore the positions of some (25%) of the habitat biologists in Ontario cut through the February 1995 budget. These are to support the administration and enforcement of the habitat provisions of the Act.[129] The Department has also entered into agreements with 31 Conservation Authorities to carry out reviews of the impacts of proposed developments on fish habitat.[130]

A report tabled by the House of Commons Standing Committee on Fisheries and Oceans in November 1998 encouraged the resolution of the dispute over habitat

protection, and called for a structure to provide the Department of Fisheries and Oceans with the resources to adequately and efficiently complete the tasks associated with habitat management.[131]

Fish Habitat Protection and Land-Use Planning

Major changes were made to the land-use planning process through the enactment of Bill 20, the *Land Use Planning and Protection Act, 1996,* and the adoption of a new Provincial Policy Statement in March 1996. These changes weakened environmental protection requirements.[132] Specifically with respect to fish habitat, the new Provincial Policy Statement provided for the protection of wetlands in a smaller area of the province, and removed requirements for impact studies of proposed developments in or adjacent to wetlands from the previous statement.[133]

In November 1996, the Ministry of Natural Resources announced new regulations to implement the January 1996 Bill 26 amendments to the *Public Lands Act* and the *Lakes and Rivers Improvement Act*. These regulations removed permit requirements for a wide range of activities likely to affect shorelines and fish habitat, including mineral exploration, the construction of shoreline structures like docks and boathouses, dredging, and the removal of aquatic plants.[134]

Wetlands, and other forms of important aquatic habitat, have also been affected by specific development activities. The Red Hill Creek Valley expressway in Hamilton, which is partially funded by the province, has been cited as a example of such development. The proposed alterations to fish habitat due to the have triggered a federal environmental assessment of the undertaking.[135]

Commercial Fisheries Management

In January 1998, the Minister of Natural Resources signed an agreement with the Ontario Commercial Fisheries Association (OCFA) that would see the industry adopt a larger role in the management of the province's commercial fisheries. This agreement follows the pattern of other industry self-regulation arrangements adopted by the Ministry for such sectors as forestry and aggregates. Under the agreement the OCFA will: compile data from commercial fish harvest reports; administer royalties; monitor compliance; and cooperate with MNR projects.[136]

Baitfish Management

In February 1999, the Ministry of Natural Resources proposed a "New business relationship" with the baitfish industry.[137] The administration of bait licensing (i.e. issuing, data collection, and harvest reporting) would be transferred to the Bait Association of Ontario (BAO). Increased bait license fees are to go into a Special Purpose Account to

finance the administration of the BAO. Specific duties to be assigned to BAO include:

- licence administration, including feed collection and submission to the Crown.
- commercial bait data management for compilation of provincial harvest records and summary statistics;
- expansion of industry's participation in fish stock monitoring and assessment; and
- expansion of the industry's role in compliance monitoring and policy development.

The Fish and Wildlife Conservation Act

In December 1997, Bill 139, the *Fish and Wildlife Conservation Act*, received Royal Assent. The Bill replaced the *Fish and Game Act*. The Bill included strengthened enforcement provisions. However, it has been criticized for continuing to advance the privatization of fish and wildlife resource management by permitting the delegation of Ministry functions to private individuals and entities, failing to provide for the protection of fish habitat, allowing for a wide range of ministerial discretion on the application of the Act and limiting the investigation of hunting, fishing and trapping activities.[138] The new Act and regulations made under it came into force on January 1, 1999.

Provincial Auditor's 1998 Annual Report

In November 1998 the Provincial Auditor tabled his Annual Report to the Legislature. The report was highly critical of the Ministry's fish and wildlife programs concluding that:

- the Ministry had not developed proper effectiveness measures to assess the program's success in achieving the sustained development of the province's fish and wildlife resources;
- the Ministry did not have adequate policies in place for the management of big game species (moose, deer and bear); and
- information from the assessment of fish populations and other data were often not available to assist management in managing regeneration, stocking and harvesting.[139]

MINERAL AGGREGATES, PETROLEUM RESOURCES AND BRINE INDUSTRIES

Introduction

The Aggregates industry has emerged as one of the primary beneficiaries of the "Common Sense Revolution." Like other aspects of the MNR's mandate, the regulation of the non-renewable resource sectors - aggregates (pits and quarries), petroleum and brine, has been the subject of major structural changes. The ministry has adopted a similar approach to that taken with the forest industry, transferring its responsibilities for compliance monitoring, reporting and rehabilitaion to these industries.

In addition, the aggregates industry has been the beneficiary of a number of specific land use planning decisions by the province. Requirements for Conservation Authority approval for aggregate extraction activities affecting waterways, shorelines and wetlands have been removed, and the government has proposed to permit aggregate extraction licences to override municipal by-laws.

With respect to the Niagara Escarpment, the government transferred responsibility for the protection of the escarpment from the Ministry of the Environment to the Ministry of Natural Resources, which is see to be sympathetic to the interests of the aggregates industry. Approval requirements for expansions of pre-1975 extraction operations on the Escarpment have been removed, and the past president of the Aggregate Producers' Association appointed to the Niagara Escarpment Commission.

Budgetary and Staff Changes

The MNR's June 1996 Business Plan for the non-renewable resource sector indicated that the program was to lose $900,000 in funding and 18.35 full-time positions.[140] The Ministry indicated its intention to transfer the bulk of its regulatory and monitoring functions in relation to non-renewable resource industries to those industries as a result of these reductions.

Bill 52, *The Aggregates and Petroleum Resources Statute Law Amendment Act, 1996*

Bill 52, which amended the *Aggregate Resources Act*, *Petroleum Resources Act, Mining Act* and *Ontario Energy Board Act* was introduced in May 1996 and enacted in December of that year. The amendments implement the approach outlined in the Ministry's Business Plan for non-renewable resources.

Aggregates

The Bill 52 amendments to the *Aggregate Resources Act* (ARA):

- replaced the existing statutory requirements for the contents approval of site plans for pits and quarries with a requirement for the filing of plans in accordance with standards to be set through regulations;
- replaced the existing requirements for public notice of license applications, with requirements to be established by regulation;
- granted the Minister complete discretion not to refer license applications to the Ontario Municipal Board for a public hearing, and permit the Minister to dictate the scope of a hearing if one is granted;
- provided for the establishment of a self-monitoring regime for the aggregates industry, transferring responsibility for site inspections, monitoring and reporting on compliance with the terms of site plans and licenses under the *Aggregate Resources Act* (ARA) to the industry;
- permitted the Minister to delegate "any person" as an inspector for the purposes of the ARA; and
- transfered the administration and delivery of the site rehabilitation program and associated Abandoned Pits and Quarries Fund to the Aggregate Producers Association of Ontario.[141]

Finally, the amendments increased fines, extended license suspension period, and provided longer time periods for the initiation of prosecutions under the Act. The permitting and disposition regarding aggregates on Crown Land was delegated to the Ministry of Transportation, which is the largest user of aggregate resources.[142]

The MNR released draft provincial standards for the operation of pits and quarries to accompany the ARA amendments in December 1996. These were heavily criticized by environmental organizations, due both to the fact that the standards were presented as non-binding guidelines, rather than regulations made under the ARA, and their weak requirements related to natural heritage protection, groundwater protection, public consultation, and compliance reporting by industry.[143] The standards were adopted as regulations under the ARA in June 1997.[144]

Petroleum Resources

Similar amendments were also made to the *Petroleum Resources Act*. These permit the delegation of site inspection responsibilities to private sector individuals certified by the MNR. The Ministry is to audit the performance of operators in accordance with provincial standards. All approvals are to be consolidated into life-cycle well licenses. In addition, jurisdiction over compulsory pooling and unitization, and all appeals are transferred from the Ontario Energy Board (OEB) to the Mining and Lands Commissioner. The rationale for this transfer of jurisdiction is to improve the "investment climate"[145] for the industry. OEB hearings are more formal, and include the possibility of interventions by public interest organizations whereas the Mining and Lands Commissioner is seen to be more sympathetic to development interests.

New standards, similar to those established for aggregates, were adopted as regulations under the *Petroleum Resources Act* in June 1997.[146]

Aggregates and Land Use Planning

Over the past four years, the aggregates industry has been the beneficiary of a number of decisions by the Cabinet to override local planning decisions under the *Planning Act*. In October 1996, for example, the government amended Peel Region's official plan to set aside 8,900 hectares solely for aggregates extraction in the town of Caledon. This action was widely criticized within the affected community for pre-empting a town-sponsored study on aggregates extraction in the municipality which was to be completed in April 1998, and resulted in the filing of 82 appeals with the Ontario Municipal Board regarding proposals to expand aggregate operations.[147] The provincial government justified the action on the basis of changes to the provincial policy statement on non-renewable resources which accompanied the March 1996 Bill 20 amendments to the *Planning Act*.[148]

Billl 25, *The Red Tape Reduction Act*

Schedule I of this omnibus Bill, enacted in December 1998, amended the *Conservation Authorities Act* to remove the requirement for Conservation Authority approval for changing, diverting or interfering with watercourses, wetlands, Great-Lakes St. Lawrence River shorelines, inland lakes, river and stream valleys, and hazardous lands for activities approved under the *Aggregate Resources Act* (i.e. aggregate extraction).

Bill 101, *The Red Tape Reduction Act #2*

Schedule M of this omnibus bill, which died on the order paper in December 1998, would have amended the *Aggregate Resources Act* permit site plans and licences issued under the Act to take precidence over municipal rules and by-laws.

Aggregates and Water Takings

Over the past four years the Ministry of the Environment has granted approval for a number of very large water takings related to the operation of aggregate extraction facilities.

Aggregates and the Niagara Escarpment

The aggregates industry has been the principle beneficiary of the province's actions over the past four years regarding the Niagara Escarpment. The Niagara Escarpment Commission and Plan were established largely to protect the Escarpment, which has been designated as a UNESCO World Biosphere Reserve, from aggregates development.

As described in the section *Land Use Planning,* in October 1996 regulations were enacted under the *Niagara Escarpment Planning and Development Act*, exempting aggregate pits and quarries operating on the Escarpment prior to 1975 from requirements

to obtain development permits to expand their activities, except where new operations involved the taking or discharge of water, or the construction of new buildings or structures.

Furthermore, in March 1997, responsibility for the administration of the Niagara Escarpment Commission and Plan was transferred from the Ministry of Environment and Energy to the Ministry of Natural Resources. The action was compared by the Coalition on the Niagara Escarpment to "putting Dracula in charge of the blood bank"[149] given the Ministry of Natural Resource's close association with the aggregates industry. In April 1998, the former President of the Aggregate Producer's Association was appointed to the Niagara Escarpment Commission.[150]

Endnotes

1.This included the following reductions: information collection and management research and development ($7.5 million); geographic information ($3.6 million); effects and effectiveness monitoring ($2.8 million); training and professional support ($1.2 million) and public consultation and reporting ($711,000). In addition, $2.7 was removed from the budget for the sustainable forestry program.

2.Personal Communication, Frank Kennedy, Ontario Ministry of Natural Resources, April 1996.

3.Ministry of Natural Resources "Questions and Answers to the Restructuring Announcement," April 1996, pg. 6.

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