

# **APPLICATION FOR REVIEW**

**PURSUANT TO SECTION 61 OF THE  
*ENVIRONMENTAL BILL OF RIGHTS***

**Application to the Ministers of Natural Resources and of  
Environment for a review of certain Ontario forest  
management planning policies that fail to adequately protect  
wildlife from logging operations and impacts.**

Submitted by Ecojustice Canada (formerly Sierra Legal) on behalf of:

**Ontario Nature  
CPAWS Wildlands League  
Earthroots  
Nature Canada  
ForestEthics  
Greenpeace Canada  
Sierra Club of Canada**

November 20, 2007

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## EXECUTIVE SUMMARY

In February 2007, the Commission for Environmental Cooperation (CEC), a body established under a NAFTA side agreement, released its findings after a comprehensive investigation<sup>1</sup> into allegations<sup>2</sup> that Canada was failing to enforce regulations under the *Migratory Birds Convention Act, 1994* (MBCA).<sup>3</sup> The complaint asserted that this failure under subsection 6(a) of the Migratory Birds Regulations (MBR) has led to the destruction from clearcut logging in Ontario's managed forest of 45,000 migratory bird nests in 2001 alone. Under the MBR it is an offence to "take, disturb, or destroy a migratory bird nest or egg."

The CEC found that the federal government<sup>4</sup> does not enforce the MBCA, a long-standing Canadian wildlife law,<sup>5</sup> insofar as the protection of migratory bird nests is concerned. The CEC confirmed that at least 45,000 migratory bird nests were destroyed during clearcut logging operations in Ontario's public forest in 2001. According to the CEC the actual figure is likely higher and, although not specifically addressed in the investigation, likely the same each year.

The CEC looked carefully at Ontario's forest management system since it provided the factual context for its inquiry into the federal failure to protect migratory bird nests.

The obvious question raised for Ontarians by the CEC findings is how the widespread destruction of migratory bird nests and dramatic projected habitat declines for migratory bird species in forests governed by the provincial Ministry of Natural Resources (MNR) could escape the notice or interest of Ontario's forest management planning system. This question is particularly important given the sustainable forest management underpinning of the provincial system, as articulated in the *Crown Forest Sustainability Act* (CFSA) and MNR policies. Indeed, maintaining wildlife diversity and abundance is considered to be an indicator of sustainable forest management.

We believe that the CEC findings regarding widespread migratory bird nest destruction, the absence of land use planning and wildlife population targets, the high levels of projected habitat declines, and the declining populations of various species --- along with reports from the province's Environmental Commissioner regarding chronic MNR funding shortfalls for core work --- point clearly to the need for a review of various

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<sup>1</sup> The investigation is known as a 'factual record.'

<sup>2</sup> The original complaint under the Article 14 and 15 citizen submission process of the *North American Agreement on Environmental Cooperation* (NAAEC) was filed in February 2002 by Sierra Legal on behalf of eight prominent North American environmental and conservation groups.

<sup>3</sup> Commission for Environmental Cooperation (CEC), *Factual Record Ontario Logging Submission (SEM-02-001) and Ontario Logging II Submission (SEM-04-06)*, prepared in accordance with Article 15 of the NAAEC, June 2006, publicly released February 2007. Referred to herein as 'CEC Factual Record 2007.'

<sup>4</sup> Environment Canada (EC) through the Canadian Wildlife Service (CWS) is tasked with enforcing the MBCA. Under international law, namely a side agreement to NAFTA, Canada is obliged to enforce its environmental laws such as the MBCA.

<sup>5</sup> The MBCA first became law almost a century ago as a result of an international treaty, and was updated in 1994.

Ontario forest management policies with the objective of making necessary changes to properly protect wildlife species and forest health.

#### **A. POLICIES TO BE REVIEWED:**

- *Policy to “ensure that no species declines on a provincial scale because of forest management activities”<sup>6</sup> even though there is no implementation framework, including suitable MNR monitoring -- and the contradiction between this policy and the practice of leaving most of the allocated forest open to unrestricted logging.*
- *Policy of approving Forest Management Plans (FMPs) based on forest management alternatives as long as preferred habitat for indicator species does not fall more than 20% below the extremes of the natural benchmark, despite the absence of scientific support for this policy.*
- *Policy of requiring that ‘known values’ be ‘considered’ in the absence of any definition of ‘to consider,’ which might otherwise provide the means to properly protect wildlife.*
- *Policy of dividing land base into resource management units with islands of protection, as opposed to a system where the land base is treated as a whole or as one ecosystem.*
- *Policy, in practice --- due to lack of MNR resources and the absence of land use planning --- of relying on the logging industry to ensure that sufficient suitable habitat is left for the maintenance of migratory bird populations, and the failure to reduce harvest levels to fit habitat requirements.*
- *Policy of relying on the Strategic Forest Management Model (SFMM) to project habitat changes despite deficiencies in the model and the common use of poor inputs and assumptions.*
- *Policy of excluding Environment Canada from provincial forest advisory committees.*
- *Policy of licensing both mills and forests (i.e. tenures) and thereby allowing industry to set timber harvesting levels.*

#### **B. CEC FACTUAL FINDINGS ABOUT ONTARIO FOREST MANAGEMENT**

The CEC found no evidence of enforcement activity by Environment Canada against logging companies for the destruction of migratory bird nests. The CEC report relates to 53 forest management units (FMUs) in central and northern Ontario --- known as the Area of Undertaking (AOU) --- which covers an area of 43.2 million hectares<sup>7</sup> (an area approximately the size of California).

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<sup>6</sup> *Forest Operations and Silviculture Manual*, 1<sup>st</sup> ed.

<sup>7</sup> *CEC Factual Record 2007*, at p. 50

The CEC carefully considered Ontario's forest management planning system given that it provided the factual context for the allegations against Environment Canada. The report comprehensively articulated the numerous deficiencies and problems in Ontario's protection of migratory birds and other wildlife species, including:

- a. The managed public forest in Ontario has already experienced significant declines in available habitat for a number of forest bird species; continuing declines are anticipated. To translate this into province-wide population trends would require an assessment across the entire range of each species in the province.
- b. Ontario forest management plans allow for significant projected habitat declines. For the 38 FMUs that contain habitat projections for migratory birds, habitat is projected to decline for 9 out of 10 species, with declines ranging up to 35%.
- c. Ontario does not track migratory bird habitat trends associated with implementation of FMPs.
- d. MNR's policy is that a FMP will be considered sustainable if preferred habitat for indicator species does not fall more than 20% below the lowest amount of such habitat predicted to occur on the landscape in the absence of human intervention (i.e. taking into account such natural events as fires).
- e. Current MNR direction on emulating natural disturbance scenarios allows forest management planners to select management alternatives that will lead to a long term reduction in the amount of preferred habitat for migratory birds included as indicators of sustainability in forest management planning.
- f. Migratory bird population trend monitoring for the 53 FMUs subject to this investigation is incomplete for forest interior bird species and remote forest areas.
- g. MNR has adopted no provincial or regional population or habitat objectives for migratory birds.
- h. MNR lacks data or fails to consider data in determining whether forest management activities are causing migratory bird species to decline in population numbers.
- i. Ontario's forest management planning system, which was developed in the mid-1990s under the CFSA, assumes that regional land use strategies and sub-regional **land use plans** are or will be in place. However, these have not yet been developed.
- j. Adequate provincial rules do not exist to protect Environment Canada's interests --- including conservation and protection of migratory birds --- in forest management activities in Ontario.

We also provide below additional recent research, which highlights bird and other wildlife population declines within Central and Northern Ontario, including the area allocated to logging. This information has led to increased concerns over the

sustainability policies of Ontario's forest management system in relation to the habitat needs of wildlife populations.

### C. FRAMEWORK FOR MNR's FOREST MANAGEMENT IN ONTARIO

Ontario's Crown forests belong to the people of Ontario. The province's MNR manages these public forests on behalf of Ontarians. Logging licenses are granted to companies if they agree to respect various conditions and obligations intended to meet overarching public objectives for forest health. **Informed** MNR supervision is vital to protecting the public interest in values such as wildlife abundance and diversity.

The *Crown Forest Sustainability Act (CFSA)*<sup>8</sup> is Ontario's key forestry law. The Act is buttressed and supported by manuals, including the *Forest Management Planning Manual*, *Forest Operations and Silviculture Manual*, *Scaling Manual*, and *Forest Information Manual*.

The CFSA imposes a legal obligation on the MNR to manage Crown forests **sustainably**. The goal of the CFSA is to provide for the long-term health of Ontario's public forests.<sup>9</sup> Crown forests are to be managed to meet **social, economic and environmental needs** of present and future generations **in accordance** with the priority of sustainability or forest health.

#### Purposes

S.1. The purposes of this Act are to provide for the sustainability of Crown forests and, in accordance with that objective, to manage Crown forests to meet social, economic and environmental needs of present and future generations.

#### Sustainability

Subs. 2(1) In this Act, "sustainability" means long term Crown forest health.

#### Determination

Subs. 2(2) For the purpose of this Act and the regulations, the sustainability of a Crown forest shall be determined in accordance with the Forest Management Planning Manual.

#### Principles

Subs. 2(3) The Forest Management Planning Manual shall provide for determinations of the sustainability of Crown forests in a manner consistent with the following principles:

1. Large, healthy, diverse and productive Crown forests and their associated ecological processes and biological diversity should be conserved.
2. The long term health and vigour of Crown forests should be provided for by using forest practices that, within the limits of silvicultural requirements, emulate natural disturbances

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<sup>8</sup> *Crown Forest Sustainability Act*, 1994, R.S.O. 1994, c.25.

<sup>9</sup> MNR. *Overview of Ontario's Forests*. <http://ontariosforests.mnr.gov.on.ca/sustainableforests.cfm>. Accessed on September 26, 2007.

and landscape patterns while minimizing adverse effects on plant life, animal life, water, soil, air and social and economic values, including recreational values and heritage values.

#### Approval by Minister

9.(1) A forest management plan is of no effect unless it is approved by the Minister. 1994, c. 25, s. 9 (1).

#### Criteria for approval

(2) The Minister **shall not approve a forest management plan unless the Minister is satisfied that the plan provides for the sustainability of the Crown forest**, having regard to the plant life, **animal life**, water, soil, air and social and economic values, including recreational values and heritage values, of the Crown forest. 1994, c. 25, s. 9 (2).

#### Preparation by licensee

10. (1) The Minister may require the holder of a forest resource licence to prepare a forest management plan for a management unit. 1994, c. 25, s. 10 (1).

#### Minister's powers

(2) The Minister may approve the plan, reject it or approve it with such modifications as may be made by the Minister. 1994, c. 25, s. 10 (2). (emphasis added)

The CEC noted in its report that, “[i]n 1994, the Timber Class EA expanded the list of elements to be considered in forest management planning within the AOU beyond the economic requirement of 'sustainable yield' to include social and environmental considerations.”<sup>10</sup> This Environmental Assessment also saw the imposition by the Ministry of Environment of 115 binding conditions on the MNR respecting its management of logging activities in the public forest.

The Ministry of Environment's 2003 *Declaration Order regarding MNR's Class Environmental Assessment Approval for Forest Management on Crown Lands in Ontario* extended and amended the original Timber EA.<sup>11</sup> This Declaration Order was itself amended in March 2007.<sup>12</sup>

The Declaration Orders and the conditions of the Timber EA were made under the EA Act, which provides for "the protection, conservation and wise management in Ontario of the environment."<sup>13</sup> Under section 3.2 of the EA Act, the Minister of the Environment has the power to issue Declaratory Orders that exempt undertakings from the application of

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<sup>10</sup> CEC *Factual Record 2007*, at p. 49

<sup>11</sup> See the MNR Backgrounder at

<http://ontariosforests.mnr.gov.on.ca/spectrasites/Viewers/showArticle> “The 2003 Declaration Order extends and amends the 1994 Environmental Assessment Act approval to allow MNR to continue forest management planning on Crown lands in Ontario, subject to conditions. This approval covers a wide range of routine or recurring activities relating to forest access, harvest, renewal, maintenance and their planning on Crown land.”

<sup>12</sup> See the backgrounder for *Declaration Order MNR-71/2*. “The 2007 Declaration Order amends Declaration Order MNR-71 (2003) and allows MNR to continue forest management planning on Crown lands in Ontario, subject to revised conditions.

<http://ontariosforests.mnr.gov.on.ca/spectrasites/viewers/showArticle.cfm?>

<sup>13</sup> *Environmental Assessment Act*, R.S.O. 1990, c. E.18, s. 2.

the Act. The 2003 Declaration Order exempts forest management planning on Crown lands on management units within the defined AOU. The Declaration Order defines the scope of the undertaking for which the exemption from an EA applies, and the conditions under which the exemption is valid.

There are also several policies which are not legally binding but which the MNR uses to guide forest management. For example, forest policies and related management practices in Ontario conform to the *Policy Framework for Sustainable Forests*, which guides various activities, including the management of old-growth forests, forest harvesting, and the conservation of non-timber values. It also provides the overall direction for an ecosystem-based approach to the management of Ontario's Crown forests.

Birds are an integral component of terrestrial wildlife diversity in the Boreal forest region, and forest management practices are required to conserve biodiversity as the forest is harvested, as outlined in various MNR publications.

In order to conserve biodiversity in forests, MNR, for example, intends to monitor the composition and structure of terrestrial and aquatic ecosystems as a component of conserving landscape diversity. Healthy populations and communities of terrestrial and aquatic life will be safeguarded over geographical areas and times.<sup>14</sup> The MNR's 2005 policy statement also notes that the Ministry's mission is to manage natural resources in an ecologically sustainable way to ensure that they are available for the enjoyment and use of future generations.<sup>15</sup>

Finally there is MNR's *Statement of Environmental Values* (SEV), which guides MNR in the conduct in its work.<sup>16</sup>

The purpose of a SEV is to explain:

(a) "how the purposes of [the EBR] are to be applied when decisions that might significantly affect the environment are made in the ministry," and

(b) "how consideration of the purposes of [the EBR] should be integrated with other considerations, including social, economic and scientific considerations, that are part of decision-making in the ministry."<sup>17</sup> According to s.11 of the EBR, "[t]he minister shall take every reasonable step to ensure that the ministry statement of environmental values is considered whenever decisions that might significantly affect the environment are made in the ministry."

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<sup>14</sup> As stated in: MNR, *State of the Forest Report (2001)* (Ontario: Queen's Printer, 2002)

<sup>15</sup> Ontario Ministry of Natural Resources Strategic Directions, *Our Sustainable Future*, Queen's Park, Toronto, 2005.

<sup>16</sup> Pursuant to the *Environmental Bill of Rights*, 1993 (EBR), under Ontario Regulation 73/94 MNR was required to produce a Statement of Environmental Values, General – O. Reg 73/94, s.1.

<sup>17</sup> *Environmental Bill of Rights*, 1993, R.S.O. 1993, c. 28, s.7.

The MNR's SEV states that its objective is "to ensure the long-term health of ecosystems by protecting and conserving our ... forest and wildlife resources as well as their biological foundations." This statement further supports the notion that the primary responsibility of MNR with respect to our public forests is to ensure their long-term health.

The SEV recognizes that preserving healthy ecosystems "is a necessary **precondition** for maintaining social and economic benefits, and sustainable development, in the long term." (our emphasis) This statement is perhaps stronger than the relationship between sustainability and development described in the purposes of the CFSA. In the SEV it appears clear that sustainable development of forest resources can only occur once the priority of healthy ecosystems is met.

MNR based its SEV on *Direction '90s*,<sup>18</sup> which provides the policy direction for resource planning and management activities and makes sustainable development the cornerstone of MNR's direction.<sup>19</sup> *Direction '90s* calls for an ecosystem approach to the management of Ontario's natural resources, and defines the essential property of healthy ecosystems as sustainability. MNR also describes its goal as the maintenance of ecosystem health through the integration of environmental, economic, and social components in decision-making.

Several fundamental concepts emerge from these sources that must be respected by forest management policies. However, as evidenced by the CEC factual record, current forest management planning and practices do not provide sufficient adherence to these key imperatives. The CFSA and the MNR's SEV both state that MNR's primary legal obligation is to ensure the long-term health of public forests and, at least in the case of the SEV, place first priority on ecosystem health.<sup>20</sup>

Unfortunately, the CFSA --- an act with both the words 'forest' and 'sustainability' in its name --- is not as clear on the priority of environmental sustainability over logging development as one might expect. There are of course unfortunate Canadian examples of the consequences of promoting resource exploitation over other values. The collapse of the Atlantic cod fishery is perhaps the most dramatic example. The failure to protect the health of the fishery resource had obvious negative implications for workers' livelihoods. So too in the case of our forests, the failure to pay proper attention to wildlife diversity and abundance may put in peril forest health and thus industries such as logging, recreation, and tourism from which many people earn their livelihoods, as well as other obvious interests such as slowing down climate change.

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<sup>18</sup> See the Ontario Environment Registry at <http://www.ebr.gov.on.ca/ERS-WEB-External/content/index2.jsp?f0=statement.ministry.natural.resources&f1=aboutTheRegistry.statement.value>

<sup>19</sup> Government of Ontario. Environmental Registry: *Statement of Environmental Values for the Ministry of Natural Resources*. <http://www.ebr.gov.on.ca>. Accessed on Sep 26, 2007.

<sup>20</sup> See however the discussion around defining ecosystem health at pp. 72-3 of the *CEC Factual Record 2007*.

The ambiguity of the CFSA on the definition of sustainability simply underlines the importance of ensuring that forest management policies --- including, for instance, that of ensuring wildlife does not decline on a provincial basis as a result of logging --- are strengthened, properly carried out, and respected.

We believe that the evidence shows that current forest management policies in Ontario pay insufficient attention to securing the long-term health of our public forests.

#### **D. HABITAT DECLINES UNDER FOREST MANAGEMENT ALTERNATIVES**

*Policy to “ensure that no species declines on a provincial scale because of forest management activities” even though there is no implementation framework, including MNR monitoring -- and the contradiction between this policy and the practice of leaving most of the allocated forest open to unrestricted logging.*

*Policy of approving FMPs based on forest management alternatives that meet timber demands as long as preferred habitat for indicator species does not fall more than 20% below the extremes of the natural benchmark, despite the absence of scientific support for this policy.*

The CEC report found that, “[w]ildlife habitat is ... used as a proxy indicator for tracking wildlife sustainability, and a cross-section of species is considered to be representative of the totality of species.”<sup>21</sup> It continued by noting:

... managed forests in Ontario have already experienced significant declines in available habitat for a number of forest bird species, and continuing declines are anticipated. In order to translate this into province-wide population trends, one would need to conduct an assessment across the entire range of each species in the province, **but it is clear that populations in forests allocated for timber production are at risk due to habitat loss associated with forest harvesting.**<sup>22</sup> (emphasis added)

The CEC also found, based on MNR documents, that “[f]rom a forestry perspective, maintaining wildlife diversity and abundance is considered to be an indicator of sustainable forest management”<sup>23</sup> but went on to say:

Measuring this indicator is difficult in the absence of monitoring information for most wildlife in the forest, including migratory birds, and Ontario does not require the forest industry to carry on or pay for such initiatives. Forest management plans are required to contain objectives only for benefits or outcomes that can be achieved by managing forest cover.<sup>24</sup>

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<sup>21</sup> CEC Factual Record 2007, p.77. The report also quoted from the MNR's FMP-5 HABITAT FOR SELECTED WILDLIFE SPECIES, which states, “[h]abitat for selected wildlife species is an indicator of forest sustainability that is used to help describe the forest condition.” at p. 80 of the Factual Record 2007.

<sup>22</sup> CEC Factual Record 2007, p. 119, quoting the CEC expert Dr. Fiona Schmiegelow.

<sup>23</sup> CEC Factual Record 2007, p.76.

<sup>24</sup> Ibid.

Consideration is given to *provincially featured species* when developing wildlife habitat management objectives for forest management plans and operational prescriptions.<sup>25</sup> Provincially featured species are moose, White-tailed Deer, Pine Marten and Pileated Woodpecker, along with threatened and endangered species. The moose and White-tailed Deer guidelines are designed to protect the habitats of about 70 percent of animal species that occur in the allocated forest. The American Marten and Pileated Woodpecker guidelines protect late successional forest stages, and a major part of the habitats required by the remaining 30% of animal species that occur in the allocated forest.

In terms of wildlife habitat, however, the CEC projected significant declines:

For the thirty-eight (38) remaining<sup>26</sup> forest management plans, the Secretariat reviewed habitat projections for birds covered by the MBR. For nine (9) of the ten species of birds covered by the MBR that were used as indicator species during forest management planning, **forest management alternatives selected by forestry companies and approved by MNR were projected to create a “desired future forest condition” with a smaller future amount of preferred habitat for that species. The total projected habitat decrease under the thirty-eight (38) forest management plans, taken together, ranges from 8% for the Blackburnian Warbler to 35% for Pileated Woodpecker.** Pileated Woodpecker is a “featured species” in Ontario’s forest management planning system. Addressing the habitat needs of the Pileated Woodpecker is meant to simultaneously address the habitat needs of many other species that rely on mature and old growth forests.<sup>27</sup> (emphasis added)

In relation to habitat, the Pileated Woodpecker has the narrowest ecological requirements of all cavity-nesting birds, yet it provides the largest cavities that may be of critical importance for a number of secondary cavity users. Thus, this species can be a key indicator of the retention of a complete community of hole-nesting birds. The 35% projected habitat reduction for the Pileated Woodpecker clearly violates the objectives of maintaining adequate habitat for a featured species, and therefore for many other species.

Population targets are not available for Pileated Woodpecker,<sup>28</sup> nor are there guidelines to direct that activities be avoided during critical times in the Pileated Woodpecker's lifecycle.

In addition to the Pileated Woodpecker, habitat is projected to decline by more than 20% for three other species, namely the Bay-breasted warbler, Boreal chickadee, and Golden-crowned Kinglet.<sup>29</sup>

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<sup>25</sup> *Ibid*, p. 76. Quoting from the MNR's *Forest Operations and Silvicultural Manual*: “3. Fish and Wildlife Habitat Management.”

<sup>26</sup> Other plans were not considered by the CEC because they were developed before habitat matrix were available or because of obvious errors in habitat calculations. See *CEC Factual Record 2007*, at p. 10.

<sup>27</sup> *CEC Factual Record 2007*, at p. 10.

<sup>28</sup> *Ibid*, p. 78.

A National Audubon Society census of birdlife<sup>30</sup> has identified the top 20 common species that have experienced severe declines over the past forty years. Almost half of these species breed in the allocated forest and are at risk of becoming uncommon or at risk if suitable habitat is not protected. Since birds are a useful forest health indicator, the decline in populations should be used as a warning signal that harvesting operations may not be sustainable and need to be modified.

MNR's approach or policy is to consider a FMP sustainable if preferred habitat for indicator species does not fall more than 20% below the lowest amount of such habitat predicted to occur on the landscape in the absence of human intervention (i.e. taking into account such natural events as fires).<sup>31</sup> Thus, the “acceptable range for natural disturbance” includes a reduction in the amount of habitat of up to 20% relative to the lowest amount of habitat expected to be available on the landscape within the next 160 years, based on computer modeling of natural disturbance scenarios.<sup>32</sup>

MNR has advised foresters that once the requirement to stay within the range of plus or minus 20% of the ‘extremes’ of the natural benchmark scenario is met, **all management alternatives are considered equal and no preference will be given to a management alternative just because it most closely emulates the natural benchmark scenario.** MNR takes the position that plus or minus 20% of the natural benchmark scenario represents a realistic set of acceptable levels given the natural variability and uncertainty associated with estimates of disturbance rates, succession rates, and post-succession transition rates.<sup>33</sup>

According to Dr. David Euler,<sup>34</sup> however, the 20% rule for testing sustainability, which originated from work done by the MNR during the *Lands for Life* process in the late 1990s, is an inaccurate measure with no scientific basis. There has been no literature

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<sup>29</sup> *Ibid*, at p. 84. In response to the claims made by the Submitters, the Canadian government indicated that the Canadian Wildlife Service (CWS) wants to focus its efforts on species of conservation priority and continue to work collaboratively with stakeholders (NGOs, industry, etc.) to sustain viable populations of migratory birds within the forests of Canada. The response also asserted that no federally protected migratory bird species nesting in the boreal region of Ontario is currently identified as threatened or endangered, and given the nature of the submission, which references areas in the boreal forest to a large extent, it follows that the submitters have not established a case that any threatened or endangered species were involved.

<sup>30</sup> Butcher, Gregory S. and Daniel K. Niven, National Audubon Society *Combining Data from the Christmas Bird Count and the Breeding Bird Survey to Determine the Continental Status and Trends of North America Birds*, June 2007 .

<sup>31</sup> *CEC Factual Record 2007*, at p. 9.

<sup>32</sup> *Ibid*, at p. 105.

<sup>33</sup> MNR, *Landscape Analysis & Assessment Paper for Southcentral Region Management Units 2004 SCR FMP Teams* (draft) (30 January 2002) at p. 12 in *CEC Factual Record 2007*. See also *CEC Factual Record 2007*, at p. 9.

<sup>34</sup> In this case commenting outside of his role as the CEC expert.

found to support the validity of this approach, nor is it documented as a policy or regulation.<sup>35</sup>

Dr. Euler questions how a fair test of sustainability could allow a 20% drop in habitat over a period of time for bird species whose populations are already declining. He explains that while there are many different definitions of sustainability, none of them would permit the habitat for a species with a concern for its population health to decline by 20%. Further, the acceptable 20% loss is measured from the lowest amount of habitat during the period selected, not the average value. Therefore, the 20% band around the null alternative should not be used. Instead the amount of habitat at the eco-regional level should be maintained, with special consideration given to species of concern rather than considering all species at the same level.

MNR scientists have also stated that under an ecosystem approach to forest management, human activities are meant to be “at least impact neutral,” and **it is Ontario policy to ensure that no species declines on a provincial scale because of forest management activities.**<sup>36</sup> Despite this policy, **Ontario has adopted no provincial or regional population or habitat objectives for migratory birds, and it does not track, at a provincial scale, migratory bird habitat trends associated with implementing FMPs.**<sup>37</sup>

Since there are no regional or provincial targets for wildlife habitat other than the requirement that the chosen management alternative not threaten preferred habitat at the eco-regional scale,<sup>38</sup> current MNR direction on emulating natural disturbance scenarios allows forest management planners to select management alternatives that will lead to a long-term reduction in the amount of preferred habitat for migratory birds included as indicators of sustainability in forest management planning in Ontario.

**We recommend that in order to properly manage wildlife populations, the amount of required habitat should be determined based on the amount and types of habitat throughout the eco-region, beyond the limited boundaries of the Forest Management Unit (FMU) as is currently the case.**

## **E. FOREST MANAGEMENT PLANNING**

*Within Ontario's regulatory framework known values (e.g. migratory bird nests) must be considered during forest management, but there is no legal or policy guidance on what it means 'to consider' a value.*

*Policy of licensing both mills and forests (i.e. tenures) and thereby authorizing industry to set timber harvesting levels.*

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<sup>35</sup> Dr. David Euler, PhD., Pers. Comm. (Sep 27, 2007) and *Bump-up Request for the Superior Martel Forest Management Plan*. Birch Point Enterprises, Forestry and Wildlife Consulting.

<sup>36</sup> MNR, *Forest Operations and Silviculture Manual*.

<sup>37</sup> *CEC Factual Record 2007*, at p. 10.

<sup>38</sup> MNR, *Forest Management Planning Manual*, 1996. Table A-2.

The CEC sets out the objectives of the forest management planning system in Ontario, noting that the system was designed to manage wood supply. Thus in the absence of processes outside of the forest management planning system, logging becomes the priority:

Within the framework of policy and planning direction outlined above, **Ontario's system of forest management establishes the process for determining where and when trees will be logged, and what, if any, actions will be taken to regenerate the forest. This system was designed to manage wood supply. "Non-timber objectives" are expected to be adopted through processes outside and above forest management planning** and achieved through implementation of forest management plans. Wildlife habitat is used as an "indicator" of sustainable forest management and as a "proxy indicator" for wildlife population status. In the absence of a system for integrated resource management, impacts of forestry activities on wildlife populations are difficult to discern.<sup>39</sup> (emphasis added)

The CEC goes on to note that such integrated directions have not been established.<sup>40</sup> Thus, in the absence of other processes such as land use planning, logging becomes the priority despite the obligation to manage the forest sustainably for needs such as wildlife protection.

As noted, the CEC found that under the current forest management system wood supply is made a priority --- "wood supply commitments must be met"<sup>41</sup> --- while wildlife objectives were to be addressed by processes (such as land use planning) outside of the forest management system:

... certain measures intended to protect wildlife have the effect of reducing available harvest area, which affects wood supply. **From an auditing perspective, wood supply commitments must be met, while habitat supply is only an indicator of sustainability (not a performance measure).** Even though the application of forest management planning guides for the protection of various wildlife species does, in principle, exclude certain areas within FMUs from logging, in its independent forest audit reports, one forest auditing firm consistently instructed planners as follows:

Land allocations for specific wildlife mosaic blocks or core areas should not be withdrawn or deferred in the calculation/determination of the available harvest area. **Only lands where forest management operations are specifically excluded**, through a land use planning decision or specific reserve prescription, **should be withdrawn from the available forest area.**<sup>42</sup> (emphasis added)

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<sup>39</sup> CEC Factual Record 2007, at pp. 70 and 71.

<sup>40</sup> CEC Factual Record 2007, at p. 72.

<sup>41</sup> CEC Factual Record 2007, at p. 75.

<sup>42</sup> CEC Factual Record 2007 at p. 65.

This approach is particularly problematic given the absence of land use planning on Crown lands. On this point the CEC quoted from the submission of the Ontario Professional Planners Institute to the Timber EA Renewal Project of February 2002:

We are concerned about the application of MNR's large landscale-oriented forest management guidelines, specifically the caribou and marten guidelines and the new Guide for Natural Pattern Emulation, specifically where they remove or 'zone out' large areas of production forest. Essentially **this results in *de facto* land use planning, and the preemption by forest management planning of what is properly land use decision-making in Ontario's Crown land and resource planning system.** (emphasis added)<sup>43</sup>

Forest management planning in Ontario is not carried out with a view to complying with prohibitions on bird nest destruction contained in the MBR.<sup>44</sup> Within the context of forest management in Ontario, in order for a migratory bird nest to be protected during logging, the nest in question must be identified prior to or during logging, mapped as a *known value*, and then protected as an *area of concern* (AOC) by not felling the tree in which the nest is found and leaving a buffer of trees around that tree.<sup>45</sup> Under Ontario's forest management system, *values* that are not *known values* are not mapped, are not recorded as AOCs, and are afforded no special protection during logging.<sup>46</sup>

Ontario's forestry system requires protection of known raptor and great blue heron nests during logging, and the needs of other birds are addressed by maintaining a range of habitat types and characteristics on the landscape, within the bounds of natural variation. In the north, where clearcut logging is the primary harvesting method, aerial surveys are the principal means of identifying raptor and great blue heron nests before logging, but these are only done by MNR when funding is available, are not always considered reliable,<sup>47</sup> and AOC planning is not done for nests other than raptor and great blue heron nests.<sup>48</sup> Forest management planning in Ontario also requires only that the current status of the preferred habitat for selected wildlife species be summarized as an indicator of forest sustainability but does not require any measures to be taken to ensure compliance with the MBCA.

The CEC, however, found that, "it would be virtually impossible and impractical to locate every migratory bird nest protected under the MBR prior to logging ..."<sup>49</sup> At the same time the CEC noted that the percentage of the land base dedicated to parks and protected areas "is insufficient to sustain migratory birds on a population basis" and that even an increase in parks to 25% would not be the solution. This leads the CEC to the conclusion that, "**within the AOU, under current land use designations, one must rely**

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<sup>43</sup> CEC Factual Record 2007, at p. 64, fn 223.

<sup>44</sup> CEC Factual Record 2007 at p. 149.

<sup>45</sup> *Ibid*, p. 114.

<sup>46</sup> *Ibid*.

<sup>47</sup> *Ibid*, p. 116.

<sup>48</sup> *Ibid*.

<sup>49</sup> CEC Factual Record, at p. 117.

**on the logging industry to ensure that sufficient suitable habitat is also left on the intervening landscape for the maintenance of migratory bird populations.”<sup>50</sup>**  
(emphasis added)

These CEC findings suggest that remedying current problems can be achieved with proper land use planning or, in the interim, with changes to existing policies.

**We therefore recommend a policy clarification or change whereby wildlife habitat needs are determined by MNR experts in advance of forest management planning and then entered into spatial habitat models as constraints on how much and where logging is allowed to take place.** It may be appropriate to put in place such constraints by defining *to consider* in the manner suggested above in the context of *known values*. Such a proposal is particularly apt given that land use planning which was considered necessary to sustainable forestry has not happened.

## **F. ECOSYSTEM-BASED MANAGEMENT**

***Policy of dividing land base into resource management units with islands of protection, as opposed to a system where the land base is treated as a whole or as one ecosystem.***

As previously mentioned, the CEC report<sup>51</sup> noted that the percentage of the land base within the AOU that has been protected from logging (in parks and protected areas) is not sufficient to sustain migratory birds on a population basis (i.e., these areas, on their own, are not sufficient to ensure that “common birds remain common”); indeed even an increase in parks and protected areas to 25% of the AOU would be insufficient on its own to achieve such an objective. This means that within the AOU, under current land use designations, one must rely on the logging industry to ensure that sufficient suitable habitat is left on the intervening landscape for the maintenance of migratory bird populations.<sup>52</sup>

To address uncertainty regarding the effects of logging on biodiversity, it has been suggested that the traditional land use planning paradigm – where the land base is divided into resource management units dotted with islands of protected areas – be abandoned in favour of a *reverse-matrix* approach that considers the land base as a whole as a supportive ecological framework within which pockets of resource development activities are allowed to be carried on. This approach would include active experimentation and close monitoring to better understand the effects of resource development on the ecosystem and a process for improving management techniques through ongoing incorporation of research results.<sup>53</sup>

Dr. Schmiegelow has also discussed the *reverse-matrix* concept outside of her role as the CEC expert. She has pointed out that,

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<sup>50</sup> *Ibid*, at p. 117.

<sup>51</sup> Based on the comments of its independent expert, Dr. Schmiegelow.

<sup>52</sup> *Ibid*, p. 117.

<sup>53</sup> *Ibid*, p. 58.

... in many regions of the world, failure to plan effectively for conservation of biological diversity has led to irretrievable losses of ecosystem structure and function or at least a need for expensive and risky restoration efforts. In relatively intact systems, planning pro-actively for biological conservation requires a systems approach that integrates the fields of conservation biology and resource management. A reverse-matrix model for regional conservation exploits the strengths of systematic conservation planning and adaptive resource management – there is the potential for application of this model in boreal regions of Canada, where opportunities for large-scale conservation are virtually unparalleled.<sup>54</sup>

Since most of the provincial Crown land within the AOU has already been allocated to forestry companies for logging, it is difficult to implement ecological planning approaches such as the *reverse-matrix* approach because it could mean revoking or amending logging licenses issued under the CFSA.<sup>55</sup> Nonetheless such a model should be considered.

**We therefore recommend that the MNR consider a reverse-matrix approach or policy.**

## G. MODELING

***Policy of relying on the Strategic Forest Management Model (SFMM) to project habitat changes despite deficiencies in the model and the common use of poor inputs and assumptions.***

SFMM is a non-spatial habitat computer model that is used to predict harvest levels for Ontario's forest management units.<sup>56</sup> It assigns a habitat unit to a particular combination of overstory composition and age within a stand, and is used to grow a computer-world forest for up to 160 years into the future. However, SFMM is a simple and non-precautionary model, based on many assumptions about how the forest will grow and change over time under different management scenarios.<sup>57</sup> For example, a difficulty when

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<sup>54</sup> Schmiegelow F.K.A. et al., “Conservation Beyond Crisis Management: A Reverse-Matrix Model” (unpublished, 2005, from the Abstract) in *CEC Factual Record 2007*, at p. 59.

<sup>55</sup> The main products of the planning exercise were *Ontario's Living Legacy Land Use Strategy* and the *Ontario Forest Accord*, and the program established to implement the products is *Ontario's Living Legacy*. *CEC Factual Record 2007*, at p. 59.

<sup>56</sup> CPAWS Wildlands League: *Ontario's Timber Harvest Levels: science or wishful thinking...?* 2007.

<sup>57</sup> *Ibid.* The CEC also notes that a regional planning exercise begun in 1997 for the area of 45 million hectares encompassing the AOU resulted in an agreement by the forest industry, environmental groups, and the Government of Ontario that the portion of the land base within this planning area set aside as parks and protected areas would increase to 12% without the logging industry thereby facing higher costs or a long-term reduction in wood supply.

predicting wildlife habitat with SFMM is a lack of confidence in the way the model differentiates wildlife habitat. The model does not consider how habitat is distributed across the landscape. It also does not consider populations but only the predicted supply of habitat. This highlights the need for models or definitive data of bird densities and projected harvests when considering the impacts of harvesting on bird populations and their dependent habitats.

Dr. Euler has also discussed, outside of his role as CEC expert, the importance of accurately predicting available habitat for species, and how deficient modelling can lead to an inappropriate amount of allowable harvesting and habitat degradation.<sup>58</sup> He notes that the natural benchmark run is an important part of deciding whether a FMP is acceptable; the computations are complex and are carried out by SFMM based on input variables that foresters use to allow the computer to calculate the result.

One variable used in these calculations, the natural forest fire cycle, is important because small changes in its value cause big changes in the natural benchmark run. For wildlife species that need mature and old growth forests, creating the natural benchmark run is extremely important. It is vital that the forest fire cycle is based on the best science available. For example, in the Proposed Long-Term Management Direction for the Nighthawk Forest the forest fire cycle used in SFMM is too short, and using an inappropriate fire cycle permits a timber harvest that results in a degradation of habitat for American marten and the many other species that use and need mature and old-growth forest.

In terms of the modeling tools used to plan for wildlife habitat conservation in the FMPs, the CEC noted that,

... the assessments rely largely on a set of habitat matrix models, which have little empirical substantiation for the region in question. The models were derived from literature on the species from other regions, and expert opinion. These sorts of habitat suitability indices were very popular in the 1980's and early 90's, but have been extensively criticized and discredited in the ecological literature, and have been challenged as planning tools.<sup>59</sup>

The CEC went on to say:

Efforts are underway to update the Ontario models with local data (Holloway *et al* 2004), but these still rely on coarse assignment of categories of suitability within a habitat matrix. Moreover, they contain no information about the spatial context or configuration of habitat, which can be an important predictor of bird species abundance. Much more sophisticated modeling approaches are being developed and applied; some of them by Ontario government personnel (e.g., Rempel and

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<sup>58</sup> Euler, Dr. David D. *The Impact of the Nighthawk Forest Management Plan on Wildlife Habitat: A Technical Analysis*, 2007.

<sup>59</sup> *CEC Factual Record 2007*, at p. 123, quoting Dr. Schmiegelow.

Kushneriuk 2003<sup>60</sup>). Furthermore, the use of models must go beyond initial development and application: they must be carefully evaluated prior to use (e.g., Boyce *et al.* 2002<sup>61</sup>), and a monitoring program must be established to determine (1) whether the habitat conditions predicted by the models are realized (i.e. monitoring compliance with planned activities), and (2) whether the predicted response by species to the habitat conditions created by management are realized (i.e. effectiveness monitoring). All of these steps should be considered fundamental to an adaptive approach to forest management that recognizes the uncertainty inherent in management decisions, and establishes management strategies that enhance learning without precluding future opportunities for change, as new information becomes available. This must include the designation of large reference areas as controls for management and reserves of populations of sensitive species.<sup>62</sup>

## H. MONITORING, LAND USE PLANNING, and LACK OF MNR CAPACITY

*Policy, in practice --- due to lack of MNR resources and the absence of land use planning --- of relying on the logging industry to ensure that sufficient suitable habitat is left for the maintenance of migratory bird populations, and the failure to reduce harvest levels to fit habitat requirements.*

*Policy to “ensure that no species declines on a provincial scale because of forest management activities” even though there is no implementation framework, including suitable MNR monitoring -- and the contradiction between this policy and the practice of leaving most of the allocated forest open to unrestricted logging.*

As previously noted, wildlife habitat is used as an *indicator* of sustainable forest management and as a *proxy indicator* for wildlife population status, however, in the absence of a system for integrated resource management, impacts of forestry activities on wildlife populations are difficult to discern.<sup>63</sup> There is also a great deal of uncertainty as to whether any species is declining on a provincial scale in Ontario due to logging because:

- 1) limits in available data regarding, and understanding of, wildlife in Ontario's forests;
- 2) lack of information on how different logging practices and guidelines for wildlife protection during logging have affected and will affect wildlife species in the forest; and

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<sup>60</sup> Rempel, R.S. and R.S. Kushneriuk. 2003. *The influence of sampling scheme and interpolation method on the power to detect spatial effects of forest birds in Ontario* (Canada). *Landscape Ecology* 18, 741-757.

<sup>61</sup> Boyce, M., P. Vernier, S. Nielsen and F.K.A. Schmiegelow. 2002. *Evaluating resource selection functions*. *Ecological Modelling* 157:281-300.

<sup>62</sup> *CEC Factual Record 2007*, at p. 123, quoting Dr. Schmiegelow.

<sup>63</sup> *CEC Factual Record 2007*, at p. 71.

3) recognition that results from research carried out elsewhere may have limited applications in Ontario.<sup>64</sup>

The CEC noted that:

In 1997, it was expected that MNR would be developing regional land use strategies, followed by sub-regional land use plans, for the planning area encompassing the AOU. The Public Lands Act was amended in 1998 to create a framework for land use planning on Crown lands, and these amendments stipulate that actions on public lands must be consistent with MNR-approved land use plans. These amendments are not yet in force.

Though regional land use strategies and sub-regional land use plans have not been developed, the forest management planning system developed in the mid-1990's under the CFSA assumes that they are or will be in place.<sup>65</sup>

The CEC went on to quote from the MNR's 2000 Report on Guidelines Review:

The notion that the SFL is too small a geographic unit to accommodate some key aspects of forest planning is not new. The second phase of the Lands for Life process was to have been the development of subregional planning in the province (MNR 1997). The Forest Resource Assessment Policy (FRAP) requires that:

*For each sub-regional land-use plan within each of the three MNR administrative regions, FRAP requires the assessment of forest resource production based on a mix of land uses which reflect regional level strategies for activities such as protection, tourism and wood supply and incorporates guidance from citizens' committees and public consultation.*

...

**It seems, however, that the intended development of subregional planning is, if not dead, then certainly dormant.** With the initial Lands for Life exercise developing as it did, the government's focus has shifted away from the original intent (which included the second phase of developing subregional plans) to implementing Living Legacy and the Forest Accord. Although interest in subregional planning remains alive in MNR, the corporate and political will to embrace it seems to have waned. **This leaves a somewhat troublesome situation in which the main vehicle for forest management planning (i.e. the FMPM) is, in some ways, not able to appropriately deal with objective setting and allocation at scales larger than an SFL.**<sup>66</sup> (emphasis added)

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<sup>64</sup> *Ibid*, p. 56.

<sup>65</sup> *CEC Factual Record 2007*, at p. 66.

<sup>66</sup> *CEC Factual Record 2007*, at pp. 66 and 67, fn 231.

The problem ultimately is that each forestry company is left to set its own objectives with no one tracking overall habitat amounts. This problem is exacerbated by ongoing funding issues at the MNR with a consequent lack of capacity to fulfill its wildlife protection and forest sustainability roles.

A recent report by Ontario's Environmental Commissioner (ECO) found significant declines in MNR funding between the early 1990s and today:

The decrease in MNR's operating budget between 1992/1993 and 2004/2005 was approximately 35 per cent, expressed in inflation-adjusted terms. Despite recent new funding that was almost entirely transferred through to forestry companies to respond to a crisis in that industry, **MNR's 2006/2007 operating budget remains approximately 18 per cent lower than in 1992/1993.**<sup>67</sup> (emphasis added)

In commenting on the MNR's Fish and Wildlife Monitoring Programs the ECO said:

MNR is responsible for the protection and management of animal and plant species in Ontario, including advising planners and builders of infrastructure about the habitat values of lands proposed for development. The ministry conducts population inventories of less than 10 per cent of Ontario's mammalian species, and there is evidence of limited capacity to monitor even high priority species such as moose, black bear and white-tailed deer. MNR relies heavily on third parties for monitoring and assessment of bird populations and habitat.

The ECO report after noting that federal wildlife responsibilities include migratory birds, the MBCA, and Fisheries and Species at Risk acts, continued:

In turn, MNR is required to comply with the species and habitat protection provisions of these acts for activities conducted on Crown lands. MNR has an obligation to understand, mitigate and report on the effects that activities, such as dam building, commercial forestry and mining conducted on Crown land, have on our natural heritage. ... Given this broad stewardship accountability, MNR must have the capacity to make and communicate informed decisions related to the management of our natural heritage.<sup>68</sup>

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In its State of the Forest Report 2001, MNR stated, "conclusions about monitored forest-based wildlife population concerns and trends at a provincial scale are not

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<sup>67</sup> ECO, *Doing Less with Less*. April 24, 2007. Backgrounder to press release.

<sup>68</sup> The ECO then divides into four categories the activities that form the basis of decisions by MNR ecologists, biologists, zoologists, and botanists: a. inventory activities, which generate distribution data, harvest rates, population counts, biological data (such as sex and age structures, reproductive rates, and genetics), and information on habitat quality, weather, food availability, etc.; b. monitoring activities (i.e., the collection of inventory data at regular time intervals); c. assessment activities (i.e., the analysis of inventory data); and reporting activities, which include the production of State of Resources reports.

yet possible” since monitoring programs did not cover the entire province. MNR indicated that the results of additional monitoring programs would be available for the 2006 State of the Forest Report (which was not published, as of February 2007).<sup>69</sup>

The ECO then notes the struggles faced by MNR staff in the carrying out of their duties:

Staff are at their limit now and asking them to do anything more than they are currently doing, even in the short term, even for the long term gain, will simply not get the necessary time and attention to be successful.” -- Source: MNR, 2004. MNR relies on third party data to monitor birds: MNR relies heavily on third party inventory, monitoring, assessment and reporting activities for information about bird populations and habitat for many of the more than 470 species of birds found in Ontario. The federal government coordinates population surveys of Ontario’s migratory birds, including waterfowl and shorebird species and more than 80 per cent of landbird species (e.g., forest songbirds, hawks, owls). MNR also relies heavily on information provided by Bird Studies Canada (BSC). In a recent review, MNR staff concluded that data obtained from some third party activities were too inconsistent or too sparse to meet its obligations. Based on this review, the ECO has serious concerns about the quality of the avian natural heritage data that MNR is relying on to advise road planners, municipalities and other stakeholders.<sup>70</sup>

The ECO found that the MNR lacks the resources necessary to do its work:

**Considerable evidence exists that MNR lacks the capacity to meet its current obligations to conduct fish and wildlife inventory, monitoring, assessment and reporting activities, despite the efforts and expertise of its staff.** Except for PWPMP activities related to commercial forestry operations on Crown land, MNR’s broad stewardship obligations to provide sound management of our natural heritage are discretionary in nature. Without an overall strategy that describes the goals and objectives of inventory and monitoring activities – as well as plans to establish priorities – these activities are particularly vulnerable to budget cuts. MNR has managed under its current lack of capacity by dropping some activities, by scaling back other activities and by using alternative methods. It has also adopted a strategy of relying on other parties, such as Bird Studies Canada, to provide funds, people and/or expertise for some activities. As urban and rural development places greater stresses on our natural heritage, the burden on MNR to protect and manage our natural heritage will continue to grow and its lack of capacity to provide adequate information for sound decision making will become increasingly apparent.<sup>71</sup>

Birds are a significant component of the biodiversity of Ontario’s boreal forest and can be found in all of its diverse habitats, making them easily monitored indicators of healthy

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<sup>69</sup> ECO, *Doing Less with Less*, at pp. 57 and 58.

<sup>70</sup> *Ibid*, at p. 59.

<sup>71</sup> ECO, *Doing Less with Less*, at p. 61.

forests. For forest management in Ontario's boreal forest to be sustainable, there needs to be a comprehensive monitoring program for species, including bird populations. Unfortunately, as the ECO report highlights, there is a lack of capacity at the MNR to adequately monitor wildlife.

Under Condition 30 of the Declaration Order the MNR is required to implement the *Provincial Wildlife Population Monitoring Program* (PWPMP) to assess the effects of commercial forestry on wildlife. This is MNR's only explicit legal obligation stemming from the environmental assessment approvals process for commercial forest management.<sup>72</sup> The PWPMP is a component of MNR's wildlife monitoring and assessment activities, however, the *Terrestrial Assessment Program*, which oversees the PWPMP, is severely under-funded, making implementation of a comprehensive monitoring program difficult.<sup>73</sup> MNR originally planned to monitor 92 species, but has since reduced this by more than half in order to reduce costs. Under the current plan, MNR monitors 43 species from four wildlife groups, including forest birds, at fixed sites.<sup>74</sup>

There was, however, inadequate funding to move forward on setting wildlife population objectives, which was to be a first step for setting regional habitat objectives that would be incorporated into land use plans that would bind everyone, including the logging industry.<sup>75</sup>

Further developments have since occurred but have not been incorporated into FMPs. Therefore, even without sufficient data or a comprehensive monitoring program, MNR is continuing to approve FMPs with high degrees of projected habitat and species declines, which runs counter to their various stated policies regarding the maintenance of biodiversity and the prevention of wildlife population declines.

## **H. COORDINATION AND LACK OF ENFORCEMENT**

### ***Policy (or decision) to exclude federal government from forest advisory committees***

Both Canada and MNR have indicated that they could not take enforcement action in connection with violations of the law that are anticipated to occur, where the prediction is

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<sup>72</sup> ECO, *Doing Less with Less*.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> In 2004, MNR released its *Wildlife Population Program Monitoring Plan*. Under "Impacts of Forest Management Activities on Bird Populations," the Plan states:

Bird Studies Canada recently completed a project in the Boreal Forest that focused on forest birds. Provincial Wildlife Population Monitoring Program data was used along with other data to assess the impacts of forest management activities on bird populations. The preliminary conclusions suggest that there were no detectable impacts of forest management on the bird populations studied.

MNR Science and Information Branch, "Wildlife Population Program Monitoring Plan – MNR's Class Environmental Assessment Approval on Crown Lands in Ontario, Condition 30(b)" (June 2004) at 7 and

*CEC Factual Record 2007* at p 137. [The last statement of the quote must, however, be read in the context of inadequate MNR monitoring and capacity.]

based on the application of a model that correlates available bird density data with projected harvesting under approved forest management plans.<sup>76</sup> According to MNR, while modeling using available data is appropriate as a basis for assessing and authorizing logging activities involving migratory bird nest destruction, modeling using available data is not appropriate as a basis for enforcement action.<sup>77</sup>

Forest Management Plans (FMPs) in Ontario are prepared under the supervision of the MNR in accordance with provincial standards (Ontario Forest Management Planning Manual and CFSA) and without any input from federal authorities on matters related to enforcing the MBCA.<sup>78</sup> While EC can be contacted for input on FMPs and has produced a non-binding guideline (Environmental Assessment Guideline for Forest Habitat of Migratory Birds) directing that activities be avoided during critical periods of migratory birds' lifecycles, EC fails to take enforcement activities to ensure that this requirement is adhered to.<sup>79</sup>

When Ontario's Ministry of the Environment released for comment in 2002 new provincial rules for protecting the environment during logging (Declaration Order MNR-71), it did not follow EC's recommendations for addressing migratory bird conservation, and the federal government, despite its obligations to protect natural resources such as migratory birds, has been denied access to provincial forest management advisory committees.<sup>80</sup> EC believes adequate provincial rules do not exist to protect its interests, including conservation and protection of migratory birds, in forest management activities in Ontario.<sup>81</sup>

## **J. CONCLUSION**

The CEC factual record provides compelling evidence that the MNR is not fulfilling its duty to the public of protecting forest health and wildlife in Ontario.

Current forest management planning allows practices that will lead to a significant and long-term reduction in the amount of preferred habitat for migratory birds. The managed public forest in Ontario has already experienced significant declines in available habitat for a number of forest bird species and continuing declines are anticipated.

Strong forest management policies will help ensure that wildlife habitat and wildlife do not decline while weak policies and monitoring will not. Indeed, MNR forest management planning guidelines (cited by the CEC) for certain migratory bird species strike an appropriate cautionary note. "Managers may be tempted to shorten rotational times for forest cutting in an attempt to provide only the minimum standards for the

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<sup>76</sup> *Ibid*, p. 127.

<sup>77</sup> *Ibid*, p. 128.

<sup>78</sup> *Ibid*, p. 12.

<sup>79</sup> *Ibid*, p. 12.

<sup>80</sup> *Ibid*, p. 154.

<sup>81</sup> *Ibid*, p. 10.

maintenance of the most critically threatened wildlife species. **In the long run, this may bring about biological disaster.**<sup>82</sup> (our emphasis)

We therefore urge the Minister of Natural Resources, in collaboration with the Minister of Environment, to undertake a review of Ontario's forest management policies related to the deficiencies outlined in this request including current habitat baseline information, modeling systems and outputs such as allowable cut levels, and monitoring programs to ensure that migratory bird and other wildlife populations are being sustained at both eco-regional and provincial levels, and that the habitats on which they depend are sufficiently protected.

It is our hope that forest management policies in Ontario will be strengthened to ensure the long-term viability of wildlife populations in Ontario's forests as well as more sustainable forest management practices overall.

## **K. Summary of Evidence in Support of the Application for Review**

The following evidence supports the need for a review of certain forest management planning policies in Ontario. We have included with this application only materials not available online.

- Commission on Environmental Cooperation (CEC), *Factual Record Ontario Logging Submission (SEM-02-001) & Ontario Logging II Submission (SEM-04-06)*, Prepared in Accordance with Article 15 of the North American Agreement on Environmental Cooperation, June 2006, Publicly Released February 2007.
- Dr. David Euler, PhD. 2006. Review and Bump-up Request of the Superior Martell Forest Management Plan. Birch Point Enterprises, Forestry and Wildlife Consulting.
- Dr. David Euler, PhD. 2007. The Impact of the Nighthawk Forest Management Plan on Wildlife Habitat: A Technical Analysis. Birch Point Enterprises, Forestry and Wildlife Consulting.
- Ontario's Timber Harvest Levels: science or wishful thinking...? CPAWS Wildlands League, 2007.
- Migratory Birds Convention Act, 1994 and S. 6(a) of the Migratory Birds Regulations
- Crown Forest Sustainability Act – Statutes of Ontario, 1994, S.O. 1994, c. 25 (CFSA)
- Declaration Order MNR-71
- MNR Statement of Environmental Values
- *Environmental Assessment Act*, R.S.O. 1990, c. E.18, s. 2.
- MNR, Forest Management Planning Manual and Forest Operations and Silviculture Manual, 1<sup>st</sup> ed
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