

Endangered Species Act Submission Standards for Activity Review and 17(2)(c) Overall Benefit Permits

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1 PURPOSE

The purpose of this document is to provide guidance to proponents on the process and specific policies regarding authorizations under clause 17(2)(c) of the Endangered Species Act, 2007 (“ESA” or “the Act”). These authorizations will hereafter be referred to as “overall benefit permits”. More specifically, this document outlines the process and guiding policies for proponents to:

1. gather detailed information to inform MNR’s assessment of whether a proposed activity is likely to contravene subsection 9(1) or 10(1) of the ESA, and determination of whether it is advisable for the proponent to seek an overall benefit permit prior to proceeding with the proposed activity;
2. apply for an overall benefit permit; and,
3. provide the required information for a complete submission package that will inform the Minister of Natural Resources’ (hereafter “Minister”) decision on the issuance of an overall benefit permit.

2 LEGAL CONTEXT

The purposes of the ESA are:

- to identify species at risk based on the best available scientific information, including information obtained from community knowledge and Aboriginal traditional knowledge;
- to protect species that are at risk and their habitats, and to promote the recovery of species that are at risk; and
- to promote stewardship activities to assist in the protection and recovery of species that are at risk.

If a species is listed on the Species at Risk in Ontario (SARO) list¹ as an extirpated, endangered or threatened species, it receives protection under the ESA. Subsection 9(1) of the ESA states that:

No person shall,

- (a) kill, harm, harass, capture or take a living member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species;

- (b) possess, transport, collect, buy, sell, lease, trade or offer to buy, sell, lease or trade,
 - (i) a living or dead member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species,
 - (ii) any part of a living or dead member of a species referred to in subclause (i),
 - (iii) anything derived from a living or dead member of a species referred to in subclause (i); or
- (c) sell, lease, trade or offer to sell, lease or trade anything that the person represents to be a thing described in subclause (b) (i), (ii) or (iii).

Clause 10(1)(a) of the ESA states that:

No person shall damage or destroy the habitat of a species that is listed on the Species at Risk in Ontario list as an endangered or threatened species².

Provided the applicable legislated requirements in subsection 17(2) of the ESA are met, the Minister may issue a permit to a person under subsection 17(1) of the Act that authorizes the person to engage in an activity that would otherwise be prohibited by subsection 9(1) or 10(1) of the Act.

There are four types of permits that may be issued for authorizing activities where the activity:

- is necessary for the protection of human health or safety - *clause 17(2)(a)*;
- has the main purpose to assist, and would assist, in the protection or recovery of the species - *clause 17(2)(b)*;
- **has the main purpose not to assist in the protection or recovery of the species, but through specific and mandatory conditions outlined in the permit will result in an overall benefit to the species within a reasonable time - *clause 17(2)(c)*;** and,
- will result in significant social or economic benefit to Ontario, but will not jeopardize the survival or recovery of species at risk - *clause 17(2)(d)*.

This guidance document pertains specifically to the submission standards for overall benefit permits issued under clause 17(2)(c) of the Act. More precisely, these permits may be issued where the following legislated requirements are satisfied:

1. Ontario Regulation 230/08 under the Endangered Species Act, 2007
2. The application of habitat protection to individual species is subject to transition provisions outlined in subsection 10(3) of the ESA. As a result, the habitat of some threatened or endangered species is not currently protected under subsection 10(1) of the Act, although it will be protected on or before June 30, 2013. In addition, the prohibition against damaging or destroying habitat also applies to an extirpated species if the species is prescribed by a regulation for that purpose.

[T]he Minister is of the opinion that the main purpose of the activity authorized by the permit is not to assist in the protection or recovery of the species specified in the permit, but,

- (i) the Minister is of the opinion that an overall benefit to the species will be achieved within a reasonable time through requirements imposed by conditions of the permit,
- (ii) the Minister is of the opinion that reasonable alternatives have been considered, including alternatives that would not adversely affect the species, and the best alternative has been adopted, and
- (iii) the Minister is of the opinion that reasonable steps to minimize adverse effects on individual members of the species are required by conditions of the permit.

In addition to the above, subsection 17(3) of the ESA requires the Minister to consider any Government Response Statement (GRS) that has been published under subsection 11(8) of the Act, with respect to the species that would be specified in the permit, before an overall benefit permit may be issued. These statements outline the actions that the government intends to take in response to the scientific advice provided in a recovery strategy for the species. Under the Act, the Minister must ensure the implementation of those actions listed within the GRS that in the opinion of the Minister are feasible and are within MNR's jurisdiction. GRSs can be found at: http://www.mnr.gov.on.ca/en/Business/Species/2ColumnSubPage /STDPROD_075797.html

The Minister is not obligated to issue an overall benefit permit to a proponent. An overall benefit permit may only be issued where the legislated requirements in clause 17(2)(c) of the ESA will be met by the conditions in the permit.

A proponent who receives an overall benefit permit (hereafter “permit holder”) must fulfil all of the conditions specified within the permit. Failure to do so could result in a contravention of the ESA and could lead to a prosecution under the Act. **Where a permit holder uses a third party to fulfil the conditions of the permit, the permit holder remains responsible for ensuring the permit conditions are satisfied.**

In addition, permissions, approvals or authorizations may be required from landowners, or other agencies or levels of government, (e.g., a conservation authority, municipality, federal or provincial government, etc.) before an activity

can be initiated. Other authorizations from MNR may be required for some activities (e.g., Wildlife Scientific Collectors Authorizations). To enhance coordination, proponents are encouraged to seek input from all relevant landowners and authorities early in the process to identify any requirements they may have. **It is the proponent's responsibility to ensure that all other permissions, approvals, and authorizations are acquired prior to proceeding with the proposed activity.**

3 EXPLANATION OF KEY CONCEPTS

3.1 What does Overall Benefit Mean?

For the purposes of clause 17(2)(c) of the ESA, the concept of providing an overall benefit to a species involves undertaking actions that contribute to improving the circumstances for the species specified in the permit. Overall benefit is more than no net loss or an exchange of like- for-like (Figure 1). Overall benefit is grounded in the protection and recovery of the species at risk and must include **more** than steps to minimize adverse effects on the protected species or habitats. The outcome of the overall benefit actions is meant to improve the relative standing of a species after taking into account the residual adverse effects to the species or its habitat that are authorized by the permit (i.e., the completion of all permit conditions achieves a net positive benefit for the species at risk).

A simplified representation of overall benefit concepts is illustrated in Figure 1. Minimizing the adverse effects on species at risk will reduce the efforts necessary to achieve an overall benefit for the species.

When applied in a manner consistent with the overall benefit guiding principles, achieving an overall benefit to a species within the context of the ESA may involve providing the species with a range of benefits, including:

- an increase in the number of reproductively-capable individuals of the species living in the wild;
- an increase in the distribution of the species within its natural range;
- an increase in the viability or resilience of existing population(s);
- an abatement or reversal of a declining population trend (i.e., reduction of key threats to the species survival); or

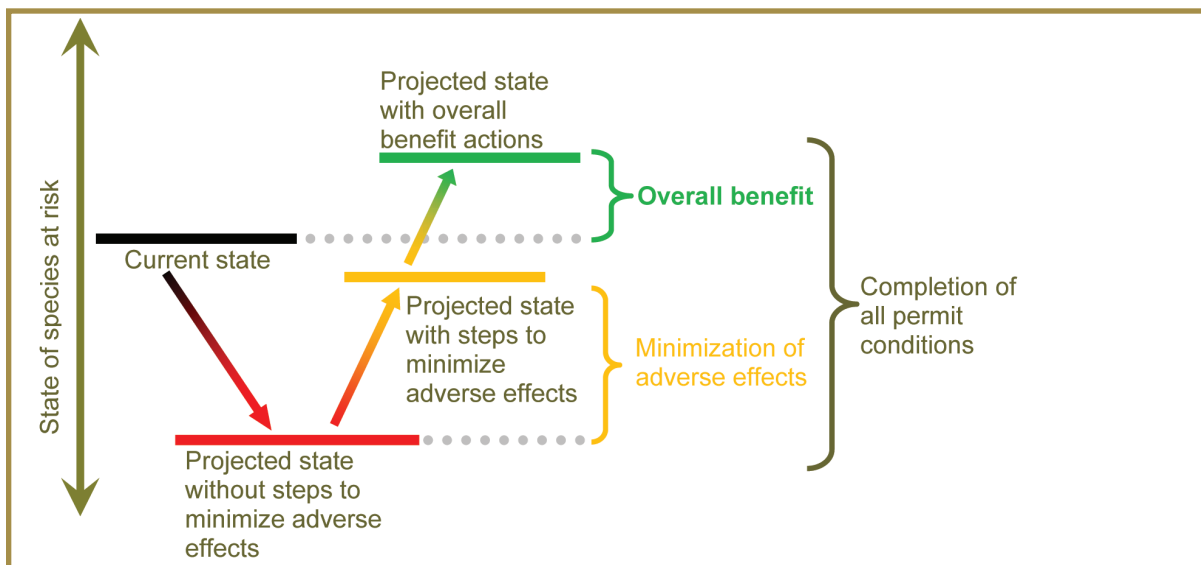


Figure 1. A simplified representation of overall benefit concepts.

Note: This figure only applies to situations where complete avoidance of adverse effects on the species at risk or protected habitat will not occur.

- an increase in the quality or amount of habitat for the species.

Activities such as filling information gaps as well as education and outreach may, under certain circumstances, contribute to an overall benefit plan for the species at risk but alone may not be considered as an overall benefit plan for the species.

It is important to emphasize that the ESA requires the Minister to be of the opinion that an overall benefit to the species will be achieved within a reasonable time, through the conditions of the permit. Given the number and diversity of species and their unique biological and ecological needs, what constitutes a reasonable time will generally vary from species to species.

3.2 Guiding Principles – The Foundation for Overall Benefit

The following guiding principles provide a firm foundation for the implementation of subclause 17(2)(c)(i) of the ESA. These principles must be considered when developing and assessing overall benefit permits. As MNR gains further knowledge and experience, policies and these principles may evolve to enhance effectiveness and efficiency in achieving overall benefit for species at risk.

- Overall benefit will be scaled and assessed on a contextual basis (e.g., species by species and activity by activity).

- Determining the sufficiency of overall benefit actions will involve consideration of:
 - baseline condition of the species (e.g., numbers, current state, trend, sensitivity to disturbance, life processes) or habitat (e.g., amount, current state, trend, sensitivity to disturbance and functionality) that would be adversely affected by the activity;
 - the severity, geographic extent, duration and permanency of the potential adverse effects likely to result from the proposed activity;
 - whether the proposed overall benefit actions are biologically and ecologically appropriate for the species;
- Recognition that in some circumstances, given the above, it may not be possible to achieve an overall benefit for the species.

- Overall benefit must be achieved within a reasonable time.

- What constitutes a reasonable time depends on the biology of the species, specific threats to the survival and recovery of the species, and the nature of the overall benefit actions being proposed.
- Actions should take into account losses in the productivity of the species and the impairment or elimination of habitat function during the period between the commencement of the proposed activity and the achievement of overall benefit.

- **Benefits are outcome-oriented.**
 - Outcomes should be tangible and linked to the protection and recovery of the species.
- **Outcomes should involve consideration of where the greatest overall benefit can be achieved for the species.**
 - Location of the overall benefit actions should be biologically and ecologically appropriate for the species.
 - Overall benefit actions that focus on the local population or habitat adversely affected by the activity are preferred.
 - Actions may occur at locations within Ontario other than the location of the proposed activity, if doing so will provide a greater contribution to the protection and recovery of the species.
- **Proposed actions should be based on the best available scientific information.**
 - The best scientific information may include scientific information obtained from community knowledge and Aboriginal traditional knowledge.
 - New knowledge will be sought through effectiveness monitoring to improve approaches for achieving an overall benefit for species at risk.
 - New knowledge acquired through actions to fill critical information gaps have the potential to contribute to an overall benefit plan where the lack of this knowledge is directly limiting the species' protection and recovery.
- **Proposed actions should involve consideration of ecological function³.**
 - Actions will involve consideration of:
 - ecological and physical processes within the relevant landscape context as well as the complexity of dynamic ecosystems; and
 - the degree to which the overall benefit actions improve the ability of the species at risk to carry out their various life processes.
- **Assessment of overall benefit will involve the consideration of relevant uncertainties and risks** (e.g., variability of ecological processes, level of understanding of the species, impacts of activities,

mitigation measures and overall benefit actions such as habitat creation).

- It is recognized there is uncertainty in the collective understanding about a species at risk, potential adverse effects of a proposed activity, and outcomes of overall benefit actions. The degree of uncertainty in these factors will be considered in determining the type, amount and magnitude of the overall benefit actions required.
- Where there is an increased potential for risk to the species or its habitat or proposed overall benefit actions carry a higher degree of uncertainty, determination of the adequacy of the overall benefit plan will err on the side of caution in favour of affording greater benefits to the species or habitat. In these cases, it **may** be necessary to undertake one or more of the following:
 - overall benefit actions at a larger scale (e.g., larger area or multiple sites);
 - multiple actions;
 - supplementary actions, when intended outcomes are not being achieved as identified through effectiveness monitoring; and/or
 - demonstration of the overall benefit before the proposed activity may commence.

4 PROCESS

4.1 Overview

The process for MNR to assess proposed activities and advise proponents on whether or not they should seek an overall benefit, and then having a proponent apply for an overall benefit permit, is multi-phased, as illustrated in Figure 2 and described in sections 4.2-4.8. Completion of the various phases of the overall benefit permitting process often involves iterative discussions between MNR and the proponent. Therefore, **proponents should contact their local MNR district office early when planning and designing a proposed activity to allow sufficient time to acquire and provide the information requested to MNR**; for MNR to assess the potential effects of the activity on the protected species at risk or habitat; and, if necessary, for proponents to apply and obtain an overall

3. Plants and animals depend on certain physical conditions (e.g., water temperature, soil type) and ecological processes (e.g., nutrient cycling, predator-prey relationships, water flow) for their survival. Together the physical conditions and ecological processes make up ecological function.

benefit permit under the ESA prior to proceeding with the proposed activity. In addition, to enhance coordination, proponents are also encouraged to seek input from all relevant landowners and authorities early in the process to identify any requirements they may have. This will help avoid unnecessary delays and ensure that species and habitat protection measures are considered at the outset.

Where a proposed activity is likely to result in a contravention of subsection 9(1) or 10(1) of the ESA, the proponent of the activity will require an authorization prior to proceeding with the activity to avoid the commission of an offence under the Act. Generally, MNR will assess each proposed activity on a case-by-case basis only after the proponent has provided sufficient information, as detailed in this document and accompanying forms, to enable MNR to fulfill its obligations under the ESA.

While it is the proponent's responsibility to provide the necessary information to MNR throughout the overall benefit permitting process, MNR district staff can offer support to proponents by:

- sharing available local-level MNR knowledge on species at risk and their habitats at or near the location of the proposed activity (*Note: species at risk information will only be shared with proponents in accordance with established protocols and policies for the management and dissemination of sensitive data*);
- identifying any information gaps that may warrant additional species at risk surveys;
- providing advice on appropriate methods for conducting species at risk surveys, which may include following species-specific protocols, where available;
- providing resources containing additional species-specific information, reports and policy direction, where available;
- advising the proponent on the consideration of avoidance alternatives for the activity and its subcomponents, that would not adversely affect the species at risk or protected habitat or otherwise contravene the ESA;
- determining whether specific activities may require authorization under the ESA to avoid a contravention of the Act; and
- providing advice on the development of an overall benefit permit application, including steps to minimize adverse effects on the species at risk or protected habitat and overall benefit actions, should a proponent elect to apply for an overall benefit permit.

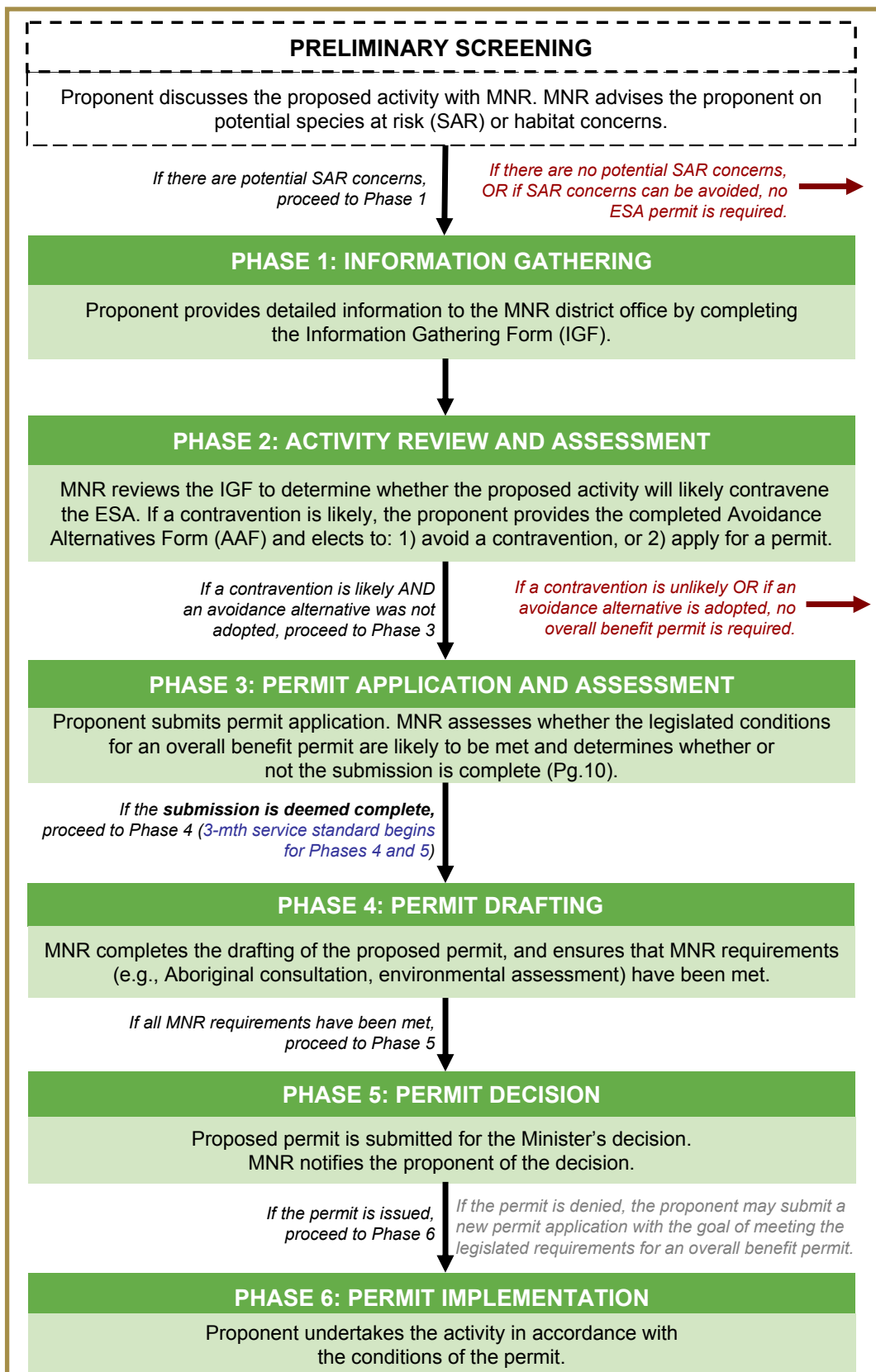


Figure 2. Overall benefit permit flowchart outlining the six phased process for activity review and assessment, and overall benefit permitting under the ESA.

4.2 Preliminary Screening

The local MNR district office is the primary contact for proponents who wish to determine whether their proposed activity⁴ is likely to contravene subsections 9(1) or 10(1) of the ESA. This would include determination of whether it is advisable for the proponent to apply for an authorization (e.g., overall benefit permit) under the ESA to avoid a contravention of the Act. As a first step, proponents should contact the local MNR district office to discuss the main purpose, general nature and location of their activity and whether any protected species at risk or their habitats are currently known to exist at or near⁵ the proposed activity location. If protected species at risk or their habitats are known to be at or near the proposed activity location, measures to avoid adverse effects on the species or its habitat can also be discussed at this time. At this stage, MNR may advise the proponent that they can proceed with their activity without an authorization under the ESA⁶, where sufficient data/information exists and MNR is confident that:

- No protected species at risk or habitats are likely to be present at or near the proposed location of the activity; or
- Protected species at risk or habitats are known to be present but the activity is not likely to contravene subsection 9(1) or 10(1) of the ESA; or
- Protected species at risk or habitats are known to be present, and would likely have been adversely affected by the activity; however, through the adoption of avoidance measures, the modified activity is not likely to contravene subsection 9(1) or 10(1) of the ESA.

Conversely, MNR may advise the proponent to proceed to Phase 1 of the overall benefit permitting process (i.e., Information Gathering), where:

- MNR is uncertain as to whether any protected species at risk or habitats are present at or near the proposed location of the activity; or
- MNR is uncertain as to what the potential effects of the proposed activity may be on any protected species at risk or habitats present at or near the proposed location of the activity; or

- MNR anticipates that the activity may contravene subsection 9(1) or 10(1) of the ESA with respect to one or more protected species at risk or habitats and has determined that an overall benefit permit would be the appropriate type of authorization for the proposed activity.

Under such circumstances, the activity will require a more comprehensive assessment by MNR to determine whether it is likely to contravene subsections 9(1) or 10(1) of the ESA. This would include the determination of whether it is advisable for the proponent to apply for an authorization prior to proceeding with the activity.

Proceed to Phase 1 (if applicable)...

4.3 Phase 1 – Information Gathering

The purpose of this phase is to gather the required information that proponents need to submit to the MNR to inform the Ministry's assessments regarding:

- whether any protected species at risk or their habitats are present at or near the location of the proposed activity;
- the determination of potential effects of the activity on these species and habitats and whether the activity is likely to contravene subsection 9(1) or 10(1) of the ESA; and
- whether it is advisable for the proponent to apply for an overall benefit permit under clause 17(2)(c) of the ESA prior to proceeding with the activity.

This information is to be submitted to the local MNR district office using the Information Gathering Form for Activities that may Affect Species or Habitat Protected under the Endangered Species Act (IGF) available at: ontario.ca/speciesatrisk.

The key types of information to be submitted by proponents in the IGF include:

- proponent's contact information;
- details of the proposed activity (e.g., purpose, location, duration, methodology, and timing of the

4. In the context of this document, activity is defined broadly to include all components associated with all stages of the activity including, but not limited to, site access and investigation, site preparation and construction, operation and maintenance, closure, decommissioning and completion, and rehabilitation and restoration stages.

5. An activity is considered "near" a species at risk or its habitat if it is physically located within a reasonable distance from the species or habitat *and* there is a reasonable likelihood that the impacts of the activity will affect the species or extend into habitat.

6. Permissions, approvals or authorizations may be required from landowners, or other agencies or levels of government (e.g., a conservation authority, municipality, federal or provincial government, etc.). Other authorizations from MNR may be required for some activities (e.g., Wildlife Scientific Collectors Authorizations). It is the proponent's responsibility to ensure that all other permissions, approvals, and authorizations are acquired prior to proceeding with the proposed activity.

various components across the full lifespan of the activity);

- engineering diagrams/drawings for the activity;
- details of the species at risk and protected habitats, with supporting rationale, that may be present at or near the proposed activity location. This will require a review of available species at risk records and information. (*Note: examples of information sources are provided in the IGF*). In addition, in areas where there is currently insufficient survey data/information, the proponent may be required to carry out species at risk surveys⁷ at or near the proposed activity location;
- site-specific maps, photos and/or satellite images overlaying the location of the proposed activity on protected species at risk and habitats present at or near the proposed location; and
- the proponent's interpretation, with supporting rationale, of the effects that the proposed activity may have on the species at risk or protected habitats found at or near the proposed activity location. (*Note: Proponents requiring assistance to complete the required information may contact their local MNR office species at risk representative*).

Completing the IGF may involve iterative discussions between MNR and the proponent. For many species at risk knowledge and information about where they and their habitat occur is often limited. Determining the presence of species at risk and their habitats often require a higher degree of knowledge and expertise than those required for routine environmental assessments. Therefore, **proponents are strongly encouraged to contact their local MNR district office prior to undertaking surveys or impact assessments to ensure they are using appropriate approaches.**

Once the IGF has been submitted to the local MNR district office, MNR will determine whether sufficient information has been provided and notify proponents if additional information is required or whether the form has been deemed complete.

Proceed to Phase 2...

4.4 Phase 2 – Activity Review and Assessment

4.4.1 Activity Review and Assessment

MNR district staff will consider the information provided by the proponent in the completed IGF to:

- determine whether any species at risk or protected habitats are present at or near the proposed activity location;
- assess and determine the potential effects of the activity on these protected species at risk and habitats and whether the activity is likely to contravene subsection 9(1) or 10(1) of the ESA; and
- determine whether it is advisable for the proponent to apply for an overall benefit permit under clause 17(2)(c) of the ESA prior to proceeding with the activity.

Once MNR has determined whether or not the proposed activity is likely to contravene subsection 9(1) or 10(1) of the ESA, the proponent will be notified of the activity review and assessment results.

If MNR has determined that the proposed activity is not likely to contravene either subsection 9(1) or 10(1) of the ESA, the proponent may proceed with the activity without acquiring an authorization under the ESA and will not need to proceed to the next step in the overall benefit permitting process.

If MNR has determined that the proposed activity is likely to contravene subsection 9(1) or 10(1) of the ESA the proponent may either:

- alter the activity in ways that will avoid the contravention(s) (see Section 4.4.2, below); or
- if avoidance is not reasonably possible, the proponent is advised to apply for an ESA authorization (e.g., an overall benefit permit) prior to proceeding with the activity.

4.4.2 Consideration of Avoidance Alternatives

The consideration of avoidance alternatives should be submitted to the local MNR district office using the Avoidance Alternatives Form for Activities that may Require an Overall Benefit Permit under Clause 17(2)(c) of the Endangered Species Act (AAF) available at: ontario.ca/speciesatrisk.

7. An ESA authorization (e.g., a permit under clause 17(2)(b) of the ESA) may be required to conduct species at risk surveys at or near the proposed activity location. Contact the local MNR district office for further information. Costs associated with conducting surveys are the responsibility of the proponent.

While avoidance alternatives may be discussed throughout the preliminary screening, information gathering and activity review and assessment phases, the submission of the completed AAF is only required prior to a proponent applying for an overall benefit permit. This form can be completed in consultation with the local MNR district office.

MNR will assess the avoidance alternatives and notify the proponent if one or more of the proposed alternatives will avoid contravention of subsection 9(1) and 10(1) of the ESA. Should the proponent elect to proceed with MNR-approved avoidance alternatives, the proponent may proceed with their proposed activity without acquiring an overall benefit permit. If the proponent does not elect to proceed with MNR-approved avoidance alternatives, then the proponent will be advised to proceed to Phase 3 of the overall benefit permitting process (i.e., Permit Application and Assessment).

Proceed to Phase 3 (if applicable)...

4.5 Phase 3 – Permit Application and Assessment

Once a proponent has made the decision to apply for a permit and has notified MNR of their intent to apply, the proponent may begin completing the Application for an Overall Benefit Permit under clause 17 (2)(c) of the Endangered Species Act (C-PAF). This form can be found at: ontario.ca/speciesatrisk. This application for an overall benefit permit is to be completed by the proponent after:

- the proponent has submitted the Information Gathering Form (IGF) to the local MNR district office and MNR has deemed it complete;
- MNR has determined that the proposed activity is likely to contravene subsection 9(1) or 10(1) of the ESA; and,
- the proponent has submitted the Avoidance Alternatives Form (AAF) to the local MNR district office and has elected not to proceed with the avoidance alternative(s) and has indicated the intent to apply for an overall benefit permit.

At this stage in Phase 3, MNR will post a notice on the Environmental Registry (ER), established under the Environmental Bill of Rights, 1993, with a comment period of at least 30 calendar days. Concurrent with the ER posting, MNR will post a notice on the Ministry's Species at Risk website (ontario.ca/speciesatrisk). This notice will inform the

public of the proposed activity, indicate how comments can be submitted and provide a link to the ER notice (see <http://www.ebr.gov.on.ca/ERS-WEB-External/>).

To support an assessment of whether the proposed activity meets the legislated requirements for an overall benefit permit, the combined information provided in the IGF, AAF and C-PAF must:

- Demonstrate that **reasonable alternatives** to the activity have been considered, including alternatives that would not adversely affect the species at risk or protected habitat (i.e., avoidance alternatives as presented in the AAF), and provide the proponent's rationale as to why the alternative proposed is the best (C-PAF);
- Describe reasonable steps that will be taken to minimize **adverse effects** of the best alternative on each protected species or habitat that is likely to be affected by the proposed activity for which a permit is sought; and
- Describe the actions that will be taken to achieve an **overall benefit** within a reasonable time for each protected species that is likely to be affected by the proposed activity for which the permit is sought. In addition, proponents will be asked to include a description of how the outcomes of these actions will contribute to the protection or recovery of the species. Care should be taken to clearly and appropriately distinguish overall benefit actions from steps proposed to minimize adverse effects associated with the proposed activity.

This information will be used by MNR staff to assess the permit application as to whether or not it is likely to meet the legislated requirements of 17(2)(c) of the ESA and will be used to inform drafting of permit conditions. The Minister will in turn use this information to form a decision on the issuance of the permit.

In addition to permit conditions that include steps to minimize adverse effects of the activity and actions to achieve an overall benefit to the species at risk, other permit conditions may include:

1. **Impact monitoring** which involves the collection and summary of scientific data on the adverse effects of the authorized activity on the species. The goal of impact monitoring is to improve future predictions of the potential adverse effects of particular activities on species at risk.

- 2. Effectiveness monitoring** which involves the collection and summary of scientific data on the success of steps taken to 1) minimize adverse effects on the species and 2) achieve an overall benefit for the species. The goal of effectiveness monitoring is to increase the success of mitigation measures and overall benefit actions for species at risk.

Both impact and effectiveness monitoring are critical components of an adaptive management approach to overall benefit permitting under the ESA. The new knowledge acquired as a result of impact and effectiveness monitoring may also increase efficiency in the permitting process and reduce the future cost to proponents associated with planning and implementing activities requiring authorization under the ESA.

- 3. Supplementary actions** which are specific action(s) that are undertaken when intended outcomes are not being achieved as identified by impact or effectiveness monitoring (i.e., low performance for mitigation measures); and/or
- 4. Reporting requirements** for scheduled submission of reports to MNR. This provides a mechanism for proponents to inform MNR of activity status and to supply the results of impact and effectiveness monitoring efforts. The submission of these reports also provides proponents with an opportunity to demonstrate their compliance with the various conditions of the permit.

During Phase 3, MNR staff will also assess the proposed activity location and the location of proposed overall benefit actions and notify proponents of any additional consultation responsibilities (e.g., Aboriginal) that need to be met in order to complete the permitting requirements. Should the duty to consult Aboriginal communities be identified, these consultation responsibilities need to be completed prior to entering phase 5 of the ESA permitting process (see Section 5 – Aboriginal Consultation for more details).

Once the proponent and MNR have agreed in principle to the draft permit conditions, MNR will undertake a Class Environmental Assessment screening for the activity (if required). Should additional EA requirements (e.g., consultation and evaluation) be identified as a result of this screening, these requirements should be completed prior

to drafting of the permit conditions in Phase 4 (see Section 6 – Environmental Assessment Act Requirements for more details).

When the proposed permit conditions have been agreed to, MNR will assess the completeness of the entire ESA permit submission package. Once deemed “complete”, MNR will post the details of the proposed permit conditions on the Ministry’s Species at Risk website. This posting will include a summary of the proposed activity, proposed measures to minimize adverse effects on the species, and proposed actions to achieve an overall benefit for the species.

Complete Submission

A submission for an overall benefit permit is deemed complete once all of the following conditions have been met to MNR’s satisfaction:

- Proponent has submitted an IGF;
- MNR has conducted a review and assessment of the proposed activity and has determined that the activity is likely to contravene subsection 9(1) or 10(1) of the ESA;
- Proponent has submitted an AAF which indicates the proponent’s intent to apply for an overall benefit permit;
- MNR has completed the Environmental Registry posting;
- Proponent has submitted a C-PAF that has been deemed complete by MNR;
- MNR staff are of the opinion that the legislated requirements under clause 17(2)(c) of the ESA are likely to be met by the proposed permit conditions in the permit application and both MNR and the proponent have agreed to the proposed permit conditions; and
- MNR has completed an EA screening (if required), identified additional EA and consultation requirements (i.e., Aboriginal and/or EA Act) and proponent and MNR have agreed to a consultation plan.

Where one or more of the above-listed requirements have not been fulfilled, MNR will inform the proponent and continue to provide advice to the proponent as they work to fulfil the requirements of the complete submission.

MNR Service Standard for Overall Benefit Permit Decisions

Generally, a three-month service standard for the decision regarding whether or not to issue a permit under clause 17(2)(c) of the ESA begins when the proponent has been notified by MNR that the overall benefit permit submission is complete. In some cases additional time (i.e., more than three months) may be required for MNR and the proponent to complete consultation and EA requirements and refine the proposed permit conditions prior to seeking the Minister's decision (e.g., where additional consultation is required under the EA Act, or as a result of the Crown's duty to consult Aboriginal communities – see Section 5 – Aboriginal Consultation, and Section 6 – Environmental Assessment Act Requirements for more details).

MNR will notify the proponent once the proponent's submission is deemed complete and will inform the proponent of any additional consultation or EA requirements that may limit the Ministry's ability to issue a decision within three months.

Proceed to Phase 4...

4.6 Phase 4 – Permit Drafting

At this stage, MNR will finalize the proposed permit conditions for Minister's decision.

Concurrent with finalizing the proposed permit conditions, MNR will ensure that any Aboriginal consultation and EA requirements (see Section 5 – Aboriginal Consultation, and Section 6 – Environmental Assessment Act Requirements for more details) are satisfied prior to proceeding to Phase 5.

Proceed to Phase 5...

4.7 Phase 5 – Permit Decision

Once all consultation and EA requirements associated with the permit have been satisfied and the proposed permit has been finalized, MNR staff will seek the Minister's decision on the issuance of the permit.

An overall benefit permit may only be issued where the legislated requirements of clause 17(2)(c) of the ESA have been satisfied (see Section 2 – Legal Context).

If the permit is approved, a signed copy will be sent to the proponent by the MNR district office. If the permit is not approved, MNR will inform the proponent of the decision in writing. Notice of the Minister's decision on the permit, including how public input was considered, will be provided on the ER and also on the MNR's website.

There are no formal mechanisms to appeal the decision with respect to the issuance of a permit under the ESA. However, the proponent may choose to continue to seek advice from MNR to revise the proposed activity and permit application details with the goal of satisfying the legislated requirements of clause 17(2)(c) of the ESA for submission of a new application for consideration.

If the permit has been approved, proceed to Phase 6...

4.8 Phase 6 – Permit Implementation

Please note that to begin the authorized activity the proponent must be in possession of the signed and approved overall benefit permit. It is also the proponent's responsibility to ensure that all other authorizations (e.g., from all relevant agencies, levels of government, landowners) are acquired prior to proceeding with the activity.

Under subsection 36(1) of the ESA, it is an offence to contravene any provision of a permit issued under section 17 of the Act. Under subsection 17(6) of the ESA, the authorizations provided by an overall benefit permit are valid only if the holder of the permit complies with all of the provisions of the permit including, but not limited to, those related to providing an overall benefit for a species, minimizing adverse effects, or any other conditions required by the permit (e.g., impact and effectiveness monitoring, reporting). Failure to comply with the provisions of a permit issued under section 17 of the Act could result in prosecution under the Act. **Where a permit holder uses a third party to fulfil the conditions of the permit, the permit holder remains responsible for ensuring the permit conditions are satisfied.**

Under clause 23(3)(2) of the Act, an enforcement officer may enter and inspect any land or other place without a warrant for the purpose of determining whether there is compliance with any provision of a permit issued under section 17 or 19.

Permit Amendments

Under subsection 17(7) of the ESA, the Minister may amend an overall benefit permit in either of the following situations:

- the permit holder consents to the amendment and the Minister is of the opinion that he or she would be authorized under clause 17(2)(c) of the ESA to issue the permit in its amended form; or
- the permit holder does not consent to the amendment of the permit and the Minister is of the opinion that the amendment is necessary to prevent jeopardizing the survival or recovery of the species in Ontario, specified in the permit, or is necessary for the protection of human health and safety.

A permit holder who seeks an amendment to the permit issued should contact the MNR district office to discuss whether an amendment may be possible.

Permit Revocation

Under clause 17(7)(b) of the ESA, the Minister may revoke the permit, without the consent of the permit holder if, in the opinion of the Minister, the revocation is necessary to prevent jeopardizing the survival or recovery in Ontario of the species specified in the permit, or is necessary for the protection of human health or safety.

5 ABORIGINAL CONSULTATION

In accordance with the constitutional recognition of Aboriginal rights and treaty rights under Section 35 of the Constitution Act, 1982, the Crown must consult with Aboriginal communities when it is aware of an existing or asserted Aboriginal or treaty right, and is considering conduct that may adversely affect the right in question.

The objectives of Aboriginal consultation include:

- Providing information to the Aboriginal community on the proposed activity;
- Obtaining information on potentially affected rights;
- Listening and responding to concerns raised by the Aboriginal community; and
- Considering adverse effects on Aboriginal or treaty rights, and determining how to address these effects, including attempting to avoid, minimize and/or mitigate those adverse effects.

The nature of the consultation required will vary with the strength of the assertion or the nature of the existing right, and the potential effects on Aboriginal or treaty rights. This legal duty to consult rests with the Crown, and the Crown is ultimately responsible for ensuring that the duty has been met. However, throughout the permitting process, MNR may delegate certain procedural aspects of the consultation to proponents.

Once the proponent has notified the MNR of their intent to apply for an overall benefit permit (i.e., at the beginning of Phase 3 – Permit Application and Assessment), MNR will conduct a preliminary assessment of established Aboriginal and treaty rights as well as any known rights assertions that may be adversely affected by the proposed activity. If any such rights are identified during this assessment, the duty for MNR to consult the affected Aboriginal communities will be triggered, and MNR will work with the proponent to develop and implement a preliminary Aboriginal consultation plan.

At the end of Phase 3 – Permit Application and Assessment, upon submission of a completed C-PAF and agreement between MNR and the proponent with respect to draft permit conditions, MNR will conduct a final assessment of Aboriginal or treaty rights that may be adversely affected by the proposed permit conditions. If any such rights are identified, the duty to consult the affected Aboriginal communities will be triggered, and MNR will work with the proponent to finalize and implement an Aboriginal consultation plan.

All Aboriginal consultation requirements must be satisfied prior to proceeding to Phase 5 – Permit Decision.

6 ENVIRONMENTAL ASSESSMENT ACT REQUIREMENTS

MNR may have requirements under the EA Act when contemplating issuance of an overall benefit permit involving the disposition of rights to a Crown resource. MNR will need to undertake a Class EA screening to determine whether there are any additional evaluation and/or consultation requirements under the EA Act. This screening will occur at the end of Phase 3 – Permit Application and Assessment, once the proposed permit conditions have been agreed to in principle between MNR staff and the

proponent. Any additional consultation and evaluation requirements identified as a result of the Class EA screening must be satisfied prior to proceeding to drafting of the permit conditions in Phase 4.

If the proposal is otherwise subject to a non-MNR EA Act requirement (e.g., municipal Class EA), MNR will not need to screen the proposal under the appropriate MNR Class EA; however, MNR will only consider the issuance of an overall benefit permit if the proponent has provided MNR with a letter that outlines how the proponent has met their EA Act obligations. This letter must be received by MNR prior to drafting of permit conditions in Phase 4.

Note: For overall benefit permits relating to renewable energy activities, proponents should contact the local MNR district office for further guidance.

7 INFORMATION SOURCES

The following is a list of links to key information sources that can be used throughout the permitting process to assist in populating the required forms. These sources serve as a valuable starting point to obtain information about the ESA, which species and their habitat are protected under the Act, and the biological needs and potential locations of these species and habitats. Proponents are strongly encouraged to review these information sources while completing the various forms. In addition, MNR's Species at Risk website (link provided below) will continue to be updated as new information and species specific guidance and direction is developed to support the implementation of the ESA. Proponents are encouraged to consult this website prior to completing forms to ensure they have the latest available species at risk guidance and information.

- Biodiversity Explorer - Natural Heritage Information Centre (NHIC) Database
<https://www.biodiversityexplorer.mnr.gov.on.ca/nhicWEB/mainSubmit.do>
- Caribou Conservation Plan (CCP)
<http://www.mnr.gov.on.ca/stdprodconsume/groups/lr/@mnr/@species/documents/document/277783.pdf>
- Caribou webpage (includes caribou specific direction and information)
<http://www.mnr.gov.on.ca/en/Business/Species/2ColumnSubPage/249504.html>
- Cervid Ecological Framework (CEF)
<http://www.mnr.gov.on.ca/stdprodconsume/groups/lr/@mnr/@fw/documents/document/263997.pdf>
- Committee on the Status of Species at Risk in Ontario (COSSARO)
<http://www.mnr.gov.on.ca/en/Business/Species/2ColumnSubPage/244543.html>
- Committee on the Status of Endangered Wildlife in Canada (COSEWIC)
http://www.sararegistry.gc.ca/default_e.cfm
- Crown Land Use Policy Atlas (CLUPA)
<http://crownlanduseatlas.mnr.gov.on.ca/clupa.html>
- Endangered Species Act, 2007
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_07e06_e.htm
- Environmental Bill of Rights, 1993
<http://www.search.e-laws.gov.on.ca/en/isysquery/e2d13db2-a4ac-4610-bfcf-744996f6083e/8/doc/?search=browseStatutes&context=#hit2>
- Environmental Registry
<http://www.ebr.gov.on.ca/ERS-WEB-External/>
- Fisheries and Oceans Canada (DFO)
<http://www.dfo-mpo.gc.ca/species-especies/index-eng.htm>
- Finalized Federal Government of Canada Species at Risk Recovery Strategies
http://www.sararegistry.gc.ca/sar/recovery/timelines_e.cfm
- Finalized Provincial Recovery Strategies
<http://www.mnr.gov.on.ca/en/Business/Species/2ColumnSubPage/287123.html>
- Finalized Provincial Government Response Statements
http://www.mnr.gov.on.ca/en/Business/Species/2ColumnSubPage/STDPROD_075797.html
- Land Information Ontario (LIO)
<http://www.mnr.gov.on.ca/en/Business/LIO/index.html>
- Local Conservation Authorities
<http://www.conservationontario.ca>
<http://conservation-ontario.on.ca/projects/DFO.html>
- Local MNR district office locations
http://www.mnr.gov.on.ca/en/ContactUs/2ColumnSubPage/STEL02_179002.html
- Local Municipalities
<http://www.mah.gov.on.ca/Page1591.aspx>
- MNR Resource Stewardship and Facility Development Class EA
<http://www.mnr.gov.on.ca/en/Business/LUEPS/Publication/245473.html>
- Natural Heritage Information Centre (NHIC)
<http://nhic.mnr.gov.on.ca/>

- Ontario Breeding Bird Atlas
<http://www.birdsontario.org/atlas/index.jsp>
- Rare Species Reporting Form - Natural Heritage Information Centre (NHIC)
http://nhic.mnr.gov.on.ca/species/species_report.cfm
- SAR Bulletin 4.2 “*Explanation of key terms relating to habitat identification, description and protection under the Endangered Species Act, 2007*”
<http://www.mnr.gov.on.ca/en/Business/Species/2ColumnSubPage/241604.html>
- SAR Policy 4.1 “*Habitat protection for endangered, threatened and extirpated species under the Endangered Species Act, 2007*”
<http://www.mnr.gov.on.ca/en/Business/Species/2ColumnSubPage/241604.html>
- Species at Risk in Ontario List (Ontario Regulation 230/08)
http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_080230_e.htm
- Species at Risk Website
ontario.ca/speciesatrisk
- Species specific habitat regulations under the ESA (Ontario Regulation 242/08)
http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_080242_e.htm
- Species status reports from the Committee on the Status of Endangered Wildlife in Canada (COSEWIC)
http://www.sararegistry.gc.ca/default_e.cfm