Thank you for the opportunity to comment on this proposal.

I would like to start this response by providing a bit of background on my involvement with the provisions of the ESA. I am currently an environmental consultant who is employed by an engineering firm. My experiences with the ESA, and its various provisions, authorizations etc. primarily fall into the following sectors:

- Private development
- Infrastructure development
- First nations
- Research and policy development

I am currently a certified butternut health assessor and have practical experience with a wide range of Endangered and Threatened species currently protected during the ten years the ESA has been in effect, by the provisions of the ESA in Ontario including: Blanding's Turtle, Butternut, Least Bittern, Henslow's Sparrow, Hill's Thistle, Kirtland's Warbler, Pugnose Shiner, Wood Turtle, American Eel, Lake Sturgeon (Great Lakes – Upper St. Lawrence Population), Redside Dace, Silver Shiner, Bank Swallow, Barn Swallow, Bobolink, Eastern Meadowlark, Eastern Whip-poor-will, Little Brown Myotis, Eastern Small-footed Myotis, Eastern Foxsnake (Georgian Bay population), Eastern Hog-nosed Snake, Gray Ratsnake (Frontenac Axis Population), Tri-colored Bat. In addition to this list of species, I have also been involved in projects which involved species of Special Concern (including species previously listed as endangered or threatened but which have been down listed over time).

I am also certified in several disciplines which involve or overlap the provisions of the ESA in some aspects, such as wetland evaluating, fisheries assessment (MTO/DFO/MNRF protocol) and ecological land classification, and have experience with regards to the overlap with Federal SARA legislation, preparation of policy and management documents. I have engaged with MNRF at the district level (biologist, planners), at the policy level (head office policy) and Conservation officers from an enforcement perspective.

I offer this information to support some specific examples of where I have seen the provisions of the ESA work well, or not so well and to emphasise that while I may be experienced with certain species or taxa (i.e. expert with some species or certain types of projects), I am not an expert on all of Ontario's Endangered or Threatened species and I hope this information provides better context for the comments, examples and recommendations provided below.

1. Landscape Approaches

Based on my experience the "case-by-case" approach does tend to lend itself well to species which are often very restricted in range or movement (i.e. some insect species and range restricted plants which may be dependant on a few well-defined vegetation communities, or isolated well-defined habitats). Conversely at the other extreme, species capable of large movements or utilization of habitat at a truly "landscape scale" (i.e. caribou) obviously lend themselves well to an integrated landscape management approach. While I cannot offer additional recommendations regarding the above-mentioned species, I do offer my thoughts based on my experience on managing protection of one species at the landscape level:

Blanding's Turtle may be one of the best examples where a landscape approach may be more appropriate than a case-by-case approach. This species occurs over a relatively large range within Ontario, and its dependence on wetland habitats and the immediately adjacent landscape (i.e. Category 2 habitat as per the general habitat guideline which includes the area within 30m of a wetland or waterbody which provides support to wetland/waterbody function) is fairly well understood. Additionally, this species is known to be dependant on the interconnectivity of wetlands for long term viability of populations due to the species ability to travel relatively long distances relative to its size (i.e. Category 3 habitat as per the general habitat guideline). While some attributes such as the protection of natural nest sites may be better facilitated through a case-by-case approach, the habitat protection provision afforded this species may be better addressed through a landscape-based approach. I have cited the general habitat guidelines for this species purposefully as I do feel they address reasonable consideration at the policy level for protection of habitat important to the species based on the best available information (i.e. balance between minimum and maximum consideration of the species habitat needs). This habitat guideline is based on an element occurrent (i.e. "applies" to suitable habitat within 2 km of an element occurrence). Unfortunately, at present this tends to cause the largest degree of uncertainty and inconsistency related to the Blanding's Turtle and its habitat. This makes it very difficult for proponents and "experts" to ensure protection of the species or its habitat within the confines of the legislation and policy. To further aggravate this MNRF has generally been unwilling to provide proponents with the location of element occurrences to a scale fine enough to properly map the extent of habitats present as per the general habitat guidelines. While some species in the province are data sensitive, the Blanding's Turtle is not generally considered data sensitive therefore as the general habitat policy requires an exact element occurrence to map habitats accurately, these element occurrences should be publicly available under the current proponent driven system. Alternatively, it is reasonable to create a publicly viewable map of known (i.e. based on documented element occurrences) map for the province which clearly identifies where Category 2 and 3 habitats for the Blanding's Turtle occurs. This could be similar to the Fisheries and Oceans Canada Aquatic Species at Risk Map which clearly defines the extent of occurrence for species as well as identified "critical" habitats (http://www.dfo-mpo.gc.ca/species-especes/sara-lep/map-carte/index-eng.html ). Such a tool could easily be built into the existing LIO geodatabase or similar online "make-a-map" tools to be publicly available. A publicly available map would negate the need to distribute element occurrence data directly, providing a degree of data sensitivity given the scale (i.e. at 2km) at which Category 2 and 3 habitats applies (I will also add that I have worked with raw data from the NHIC database and also understand some of the limitations associated with accurately mapping historical accounts of some species given). I would also suggest that areas which meet the criteria of Category 1 habitats should not be included in any publicly available document as nesting and overwintering sites are of a higher sensitivity than the more general Category 2 and 3 habitats. Of course, this would only address the existing policy on habitat protection (i.e. provisions of the general habitats guideline) and would require annual updates as new information on occurrence of the species is collected. Though at present a provincial recovery strategy for the Blanding's Turtle does not exist at this time, and the species presents unique challenges in terms of information gaps in its ecology in Ontario, several threats to the species and its habitats which lend themselves well to a landscape approach are well documented. These include impact of roads and railway networks (direct mortality, habitat fragmentation), invasive species (particularly *Phragmites australis ssp. australis*), loss, fragmentation and/ or degradation of wetland and riparian habitats (i.e. land conversion for other uses) (https://www.rgistrelep-

sararegistry.gc.ca/virtual_sara/files/plans/rs_blandings_turtle_e_final.pdf ). As part of a landscape approach to protection of the Blanding's Turtle the following could be considered:

- Streamlined authorization process (i.e. special registration application or agreement) for transportation projects which would allow "minor" impacts to Category 2 and 3 habitats provided the project can demonstrate an "overall benefit" by reducing road mortality and maintaining habitats connectivity. I would suggest that a mitigation plan should be mandatory for this process which clearly outlines the steps taken to mitigate road mortality and habitats fragmentation and that as with other mitigation plans the plan be prepared by a qualified expert in the Blanding's Turtle in the context of infrastructure (I will touch more on qualified experts later in this letter).
- Better integration of the protection of Blanding's Turtle habitats and values identified in the wetland evaluation system. For example, at present during wetland scoring, presence of a threatened or endangered species within the wetland automatically scores sufficient points in the special features category to consider the wetland a Provincially Significant Wetland (PSW). This is in line with provincial values related to species at risk, however the practical application of this provision is often difficult and the general habitat provisions of the ESA do not necessarily align with the policy surrounding scoring of wetland values associated with the Blanding's Turtle. Additionally, though wetland evaluation files are considered "open" and can be updated at any time, the mechanisms for this (particularly as it relates to new information concerning occurrences of the Blanding's Turtle) is inconsistent. In short, if Category 2 or 3 Blanding's Turtle habitats is documented as occurring within a portion of a wetland as defined by the wetland evaluation system, that wetland file and associated provincial and municipal mapping should be annually updated to reflect the occurrence (i.e. wetland "officially" becomes a PSW). I would also suggest that in the spirit of a landscape approach to habitats protection, the entire wetland and associated terrestrial buffer (i.e. 30m adjacent to the wetland) should be considered Category 2 Blanding's Turtle habitats provided protection under the provisions of the ESA (i.e. if the wetland scores sufficient points based on the occurrence to be a PSW, then the entire PSW also represents habitats for the Blanding's Turtle given the species dependence on wetland habitats, forgoing the 2 km distance from the occurrence in this instance). This would be an important integration of the ESA with the wetland evaluations as the PSW designation is a tool used under the provisions of the Provincial Policy Statement.
- Suggest a streamlined approval process or list of "activities which do not require review under the provisions of the ESA" (similar to the Fisheries and Oceans Canada website which outlines types of projects near waterbodies that do not require review by the agency http://www.dfo-mpo.gc.ca/pnw-ppe/activities-activites-eng.html ) for proponents whose projects will have small footprints/impacts within the terrestrial portion of the Category 2 and 3 habitats. In essence given the large-scale use of the land base by this species, much of the terrestrial habitats used by the Blanding's Turtle is reasonably resilient to change and human presence provided habitats are not fragmented, wetland degraded or destroyed or road mortality is increased. Though all citizens of Ontario have a stake in the long-term survival of this species, a landscape-based approach should not be onerous on the average landowner. In essence many activities such as pasturing of livestock, construction of a single-family home, selective harvest of forest products etc. done at the scale typical of an individual or family are not likely to be as impactive to the specie as projects undertaken by larger entities (i.e. private corporations and government

bodies) which have larger footprints. This would also allow for better integration of habitat provisions and consideration for the Blanding's Turtle and its habitats within the context of the Provincial Policy Statement requirements (i.e. less onerous for both regulators and proponents in most situations). To be effective this would have to be done in accompaniment with a publicly available map of Blanding's Turtle habitats within the province to allow transparency between provincial government, municipal government, individual landowners and businesses.

2. Listing Process and Protections for Species at Risk

This is a large challenge. I do agree that there is not necessarily enough public notice before a new species is automatically listed. Though improvements have been made, it is not always clear which species will be assessed and when, likewise the timeframe for adding the species to the ESA with their assessed status is not consistent. Stricter standards regarding the lead up to assessments (i.e. better public notice of when a species will be assessed) and stricter standards on when the ESA is updated (i.e. when to expect new species to be added to the list) would be helpful.

I partially agree that automatic species and habitat protections can contribute to high uncertainty and costly impacts at least historically. The best example of this is perhaps Bobolink, which caused major, perhaps initially unintended, disruptions to the development sector when it was afforded habitat protection. In the Ottawa area for example, I was involved in several development projects at the time this species was listed. Prior to the listing of Bobolink, farmlands (i.e. non-Class 1 agricultural lands which supported grazing of livestock, production of hay or growing of row crops) were often considered for development lands due to the lack of other environmental constraints. This resulted in many projects being delayed until appropriate studies could be completed determining if Bobolinks were present. Conversely, I would suggest that not all new listings resulted in sufficient consideration in regards to habitat protection. In particular the four species of at-risk bats. Though the cause of decline is related primarily to fungal diseases associated with hibernacula, the policy surrounding habitat protection (i.e. habitats used for breeding and migration) was slow to "catch up" with the provisions of the ESA as it relates to habitats protection and conversely to the issues surrounding Bobolink the species were often not considered in relation to development proposals. Though proponents have been quick to cite uncertainty and onerousness as concerns, I would suggest the real concern has been a lack of clarity and consistency in the policies which have been used to drive habitat protection (i.e. automatic habitat protection is not the issue, how that habitat protection is prescribed "on the ground" creates the most significant impacts to development).

3. Species Recovery Policies and Habitat Regulations

I will be blunt, I am not convinced that the government response statements or recovery strategies offer much in the way of actual aid to the species in question. I feel this is mostly due to lack of enforcement of the underlying "intent" of the Act as it relates to species and their habitats. What seems to be the most important aspect of the response statements and recovery strategies is to aid in decision making at the authorization (i.e. overall benefits in particular) stage of a project. This is especially true where MNRF review of the authorization mechanism is required.

In relation to the challenges:

- I do agree that a set timeframe of nine (9) months for the preparation of a government response statement is to short of a timeframe and there should be mechanisms for changing (shortening or extending) this timeframe (i.e. it should not be arbitrarily set to a nine-month period). I would suggest however that for many species the time between their listing as endangered and threatened, and the time it takes to complete the response statement, recovery strategies and general habitat description or regulation (if completed) can be the most critical period for species or their habitat. As identified, this is when uncertainty is most prevalent for enforcement and protection (policies etc.) as well as for proponents in relation to
    - Uncertainty of how to meet the intent of the Act as it relates to a newly listed species,
    - What requirements there are for surveys, permits etc. (this may result in significant delays in trying to engage MNRF for guidance). and
    - Occasionally opportunity to "interpret" in a proponent driven system how protection or exemption to protection should be applied. The best example of this was the listing of Bobolink, while it was clear why agricultural exemptions were given, the private development industry did look for ways to "interpret" this to avoid delays or the need for permits. In essence having fields ploughed and planted in corn or soybeans prior to the need for environmental studies under the Provincial Policy Statement requirements (i.e. EIS etc.). In the end this resulted in the species loosing out.
- I agree a standard five-year review of progress towards the protection of a species is often to soon, but may not be soon enough for some species and situations. I would suggest a more species driven approach of setting milestones, where review of meeting recovery goals should be set in the recovery strategies. This could then be addressed in the response statement to either adopt suggested timeframes for review of milestones, or a rational could be provided by the Government in the response statement to clearly explain why a different timeframe for review of progress should be used. This would build flexibility in the system, allow for the setting of practical timeframes for review and build transparency on the decision process (i.e. balance between a science-based approach taken in the recovery strategy documents vs a more broad-spectrum planning approach considering other variables such as social and economic variables in the response statement).
- I agree habitat regulations are not needed for all species. In many circumstances they are still difficult to enforce and may not be clear on what is legally permitted vs not permitted within those habitats. A general habitat approach can suffer from the same issues of enforceability but these do lend themselves better to revisions over time. It would probably be beneficial to create general habitat descriptions for a wider range of species vs creating more habitat regulations due to this potential for flexibility. The problem with either system however is the lack of a mechanism to allow for a closed feedback loop. These regulations and general habitat descriptions often drive the next steps of the authorization or exemption process, however there is little ability to review projects to see how these regulated or general habitat provisions benefited or did not benefit the species. If the system is going to remain a "proponent driven" yet "science based" system for the protection of endangered and threatened species and their habitat, a more standardised system of linking these regulations and descriptions to the rest of the process (i.e. recovery strategies, response statements, authorizations, exemptions etc.) and regularly updating these regulations and descriptions is needed. Perhaps setting a standard timeframe for reviewing and updating these tools which tend to be applied at the project

specific scale most is warranted. Such a system would also allow for industry driven knowledge (i.e. practical experience with particular species or habitats as it relates to specific industry practices) to be incorporated into the protection/recovery of species.

In relation to the discussion questions:

- As the discussion question states, species where recovery approaches are complex or where additional engagement is required are the most appropriate situations for a longer timeframe for response. Transparency is of the utmost importance here, however, given the inherent complexities. For many species where additional engagement may be warranted this engagement may be anticipated to some degree even before the species is listed (this may not be the case 100% of the time but for many species this is known prior to the species listing). In short it is often easy to justify this for species where factors are complex. I'm not sure that the species or Ontarians would truly "benefit" from a delayed timeframe however, in any circumstance. As previously mentioned, lack of guidance tends to result in either delays in a process (approval process etc.) due to uncertainty or loss or destruction of habitat (i.e. proponents choosing to continue with activities or "remove" habitats during the period of uncertainty under the perception that it will make things easier through a planning process etc.). I suppose the argument could be made that in this time of uncertainty certain individuals or businesses in Ontario may benefit from the uncertainty but the species certainly will not (i.e. threats could be in the short term exasperated which for some species may cause declines in population and available habitat).
- As mentioned above, I would suggest that if there are scientifically driven rationales or social economic driven rationales of why review of recovery progress, both are reasonable grounds to extend the review process timeframe.
- In regards to habitat regulations, I would suggest that regulations do not build certainty for businesses or individuals about the scope of habitat protected and I'm not sure that without knowledge of a species requirements, and an ethical position of "trying" to meet the intent of the Act, that these regulations are implementable for most Ontarians within the current "proponent driven" system. While the science and intent of creating a regulation is commendable, the implementation of these regulations seems to be more difficult than the similar general habitat descriptions (which are also difficult to enforce). While "ignorance" of a law is never a defence for breaking it, I would suggest most Ontarians who may live within a geographic area in which a regulation applies have never read the regulation and if they have, they are not likely able to understand every aspect of how the regulation is trying to protect the species and its habitat. They have no idea what the regulations cover or how it impacts their activities. Many of the current regulations do contain useful information for municipal and provincial planning, however in practice, in my own experience, this is not something most planners are aware of or understand unless an "expert" in the species brings it to their attention. To use an example of how regulations currently does not seem to work for one species in particular lets look at the Habitat Protection Summary for Gray Ratsnake (Frontenac Axis Population) (http://files.ontario.ca/environment-and-energy/species-at-risk/Gray_Ratsnake_HR_Summary_Eng.pdf). Fist this document does present the regulation in a manner which is accessible to a wider audience than the regulation itself. It identifies the areas which are regulated which includes the geographic areas where it applies: the *cities of Kingston*

*and Brockville; the Town of Gananoque; the townships of Central Frontenac, Frontenac Islands, and South Frontenac within the County of Frontenac; the United Counties of Leeds and Grenville; and the townships of Drummond/North Elmsley and Tay Valley within the County of Lanark*. At face value this should be a trigger for all development activities (in particular all municipalities) to consider Gray Ratsnake habitat as it relates to development within their municipality (clearly regulated). One of the obstacles here is that the regulation also defines the protected area as the area within 1000 m of a Gray Ratsnake (i.e. element occurrence). Element occurrences are generally taken from the NHIC database. It is generally MNRF's stance that lack of an occurrence does not mean a species is not present and therefore again, at face value, it would suggest that where occurrences are not known within the identified municipalities, targeted surveys, or at least habitat suitability surveys should be completed, which is often not the case. To add to the confusion, publicly available information from the Natural Heritage Information Center is only available through the LIO Geodatabase at the 1 km level (i.e. specific locations for Gray Ratsnake occurrences are not generally provided by MNRF so that the regulated habitat could be mapped in accordance with the protection summary) and hibernacula are often considered data sensitive due to their sensitivity (i.e. indefinite use). The guide also indicates the level of "sensitivity" for habitat features, with hibernacula and the area within 150 m of the features (i.e. not necessarily a circular radius) having the lowest tolerance for alteration. The guide states that hibernacula are protected indefinitely (i.e. though Gray Ratsnake occurrences may eventually become "historical" confirmed hibernacula are indefinitely protected). The habitat regulation does not identify the level of investigations required to confirm a hibernaculum or the expertise required to determine this (rightfully so). The government response statement identifies the development of a survey protocol to be used by proponents to detect the presence or absence of Gray Ratsnakes which has been completed. Unfortunately, documenting hibernacula as per the definition given in the habitat regulation requirements is virtually impossible. The NHIC database relies on primarily voluntarily submitted data most of which is obtained from the general public. While Gray Ratsnake occurrences (i.e. snakes observed on the road, while hiking etc.) are often reported, documented hibernacula records are rare (i.e. under reported given the species tendency to remain within 1 km of a hibernacula and the rational for the 1000 m provision of the regulation). Due to the extreme difficulty in documenting a hibernaculum for this species (the most sensitive habitat feature) the provisions of this regulation are essentially not enforceable at a scale within the landscape (i.e. where the regulation applies). In summary, by prescribing a regulation, only those areas which meet the definition outlined in the regulation are protected under the regulation (i.e. confirmed hibernacula and area within 150 m of the feature). Given the difficulty in confirming the presence of a hibernacula (i.e. radio telemetry not cost effective, practical or likely to be authorized by MNRF for most proponents) while the regulation sounds fantastic in its protection on paper, it is virtually impossible to practically implement and enforce. Ultimately this is a case where the species has the highest potential of loosing out, which may be exasperated by the species dependence on sites which offer specific conditions for overwintering (i.e. without the hibernacula a population cannot exist). I will add that I have participated in several surveys for this species within the city of Kingston, the townships of Central Frontenac, the United Counties of Leeds and Grenville; and the townships of Drummond/North Elmsley and Tay Valley within the County of Lanark all prescribed as areas regulated for the species. While surficial features

which may be suitable as hibernacula for the species are reasonably easy to identify (i.e. rock outcroppings, rock barrens, karst etc.) confirming usage of a feature (let alone the extent of the feature suitable for hibernation) by the species as a hibernaculum is virtually impossible, even following the survey methodology created by MNRF for the species (i.e. visual encounter surveys, cover board surveys and road surveys). This is perhaps an excellent example of where the intent of creating the habitat regulation was genuine, but the ability to protect the species habitat is actually hampered (i.e. must meet the strict criteria) and this would have perhaps been better facilitated through a general habitat description which could be a little less ridged in its definition of areas which should be protected (i.e. what kinds of habitat should be afforded protection given the major knowledge gaps in this species usage of such a specialized habitat component).

4. Authorization Processes

The topic of authorizations is a large one. This is obviously the component of the ESA and its protection requirements which is most important to proponents and businesses as this is the part of the process which allows for the prohibitions of the ESA to take place provided the purpose of the act is met in particular the following listed under the Purpose of the Act:

*2. To protect species that are at risk and their habitats, and to promote the recovery of species that are at risk.*

*3. To promote stewardship activities to assist in the protection and recovery of species that are at risk. 2007, c. 6, s. 1.*

I will admit that I have limited exposure to the stewardship agreement as a type of authorization as typically I find most proponents (private developers, municipalities and the transportation sector) are not particularly interested in this particular authorization. In essence though the purpose of the act is to protect species and their habitats and promote recovery and stewardship, this is not the primary business or focus for most proponents. I do believe in principle authorizations which promote this kind of mindset in line with the purpose of the act are likely to be the most successful at meeting the goal of protecting species and habitat. Obviously, there are exceptions such as the Health and Safety Permit, Significant Social and Economic Benefit Permit which exist not for the benefit of the species but for the benefit of the activity where justification is warranted (I will not discuss those methods of authorization further). All of the current authorizations available require consultation with and review by MNRF with the exception of the regulatory exemptions.

Without giving specific examples I would suggest that the current authorizations most used (i.e. regulatory exemptions, overall benefit permits, health and safety permits) really vary in amount of administrative burdens, delays to the proponent and the protection practically applied to species. I've seen small scale developers incur significant delays and expense on projects where the general "ethics" of the developer was to "do the right thing" in terms of species and habitat protection, and conversely I have seen large proponents interpret available regulatory exemptions to benefit the activity. As mentioned in the discussion paper there is a difference in how the Act impacts individuals or businesses who may only seek authorization for one or two projects, vs larger businesses or organizations which may seek thousands of exemptions or authorizations for activities across the province. In relation to the discussion questions I offer the following:

New authorization tools

I would suggest that if the purpose of the act is to remain the same, the administration of the act needs to consider the end proponent and weight what exemptions, authorizations etc. are available to them based on their potential for impact. A one size fits all exemption or authorization process does not seem to work for the species or for businesses and individuals. The following may be worthwhile tools to consider for authorization/exemptions:

- *Industry Management Plan Agreement*: Similar to the stewardship agreement, a streamlined authorization process could be facilitated for larger scale proponents which are likely to have higher impacts on specific species at risk (i.e. transportation sector and Blanding's Turtle). This would allow some activities to occur which may impact habitat etc. provided activities with predicted or anticipated benefit outcomes take place. This type of agreement would likely only work for the largest proponents in the province and it would have to be made clear under the legally binding agreement that the purpose of the act must be upheld. This may be best used for species which occur over a large range or which lend themselves well to a larger landscape approach. Ultimately this kind of agreement for larger proponents is intended to avoid the need for other authorizations or exemptions (i.e. reduce the need to submit numerous registrations per year, eliminate need to apply for health and safety permits or overall benefit permits provided activities are approved etc.) while still providing benefit to the species in question. To facilitate such a tool, I would suggest the following:
    - Proponent must draft a document similar to a management plan outlining routine activity typically undertaken which may impact the species (or if justifiable multiple species may be included), actions that could be taken to minimize or eliminate impacts to the species or its habitat and how ultimately the needs of the species will be considered (i.e. benefit to the species). As there may be overlap between the provisions of the ESA and other applicable legislation/policy this type of information could also be outlined in the management document (i.e. tool to avoid duplication). This document could be considered an open document, but unlike the current mitigation plans employed under several of the regulatory exemptions the management plan should be reviewed and accepted by the appropriate agency (i.e. MNRF);
    - Proponent must demonstrate that they have implemented provisions outlined in the management document into contracts, tenders, maintenance activities etc. which they undertake (i.e. documentation process to accompany all projects). The onerousness of this would ultimately depend on the impact of activities on a species;
    - Proponent must monitor the effectiveness of mitigation measures to species and habitat and provide documentation along with any recommendations made to improve effectiveness on future projects (i.e. document and allow industry to check effectiveness and change accordingly); and
    - Recommend that auditing be a regular component of the oversight provided by MNRF (i.e. review of monitoring reports, site visits by enforcement officers etc.). Such audits are not likely required for all projects but rather a randomly selected number of projects per year undertaken by the proponent. This is unfortunately the only way to ensure such agreements are upheld in both principle and practice. If proponents wish to operate in a streamlined process for their activities, they must also be willing to

demonstrate they are striving to uphold the purpose and "intent" of the act as it relates to species.

- *list of "activities which do not require review under the provisions of the ESA*" though this is technically not an authorization, creating a list of this nature would reduce impacts to smaller scale proponents (i.e. individuals) within the province who may routinely engage in low impact activities or who's activities may be of negligible impact (i.e. very small size etc.). As with the regulatory exemptions there may be species which do not qualify for these kinds of activities (i.e. range restricted plants) as these species may be impacted by very localized activities.
- *Firmer stance by the province on when targeted surveys are required to be undertaken by a proponent when data is lacking or unavailable*: Within the last two (2) years, for my involvement in projects I have started to see a desire by proponents to find ways to avoid having to consider the ESA and its requirements. Unfortunately, this ultimately tends to boil down to a matter of interpretation. If the implementation of the ESA is to remain a "proponent driven" system, then proponents must be informed clearly through the legislation and regulations of their requirements to undertake appropriate surveys to clearly document steps they have taken to ensure SAR are not impacted. If proponents lack the expertise required to navigate this system from the perspective of species usage of available habitat than expert advice should be sought. This may sound like common sense, however far to often in my experience proponents believe they are sufficiently educated to make decisions of this nature (i.e. most people are at least familiar with Barn Swallows and the familiarity tends to lead to strong opinions by proponents of the availability of habitat, dependency on habitat and the rational behind why the protection afforded by the ESA should or should not apply, though this is often not based on biological or ecological information). Lack of clear accountability by proponents may result in projects impacting species or their habitat without ever getting to the authorization or regulatory exemption stage of the process.

<u>Other approaches to authorizations</u>

As the third purpose of the ESA is to promote stewardship activities to assist in the protection and recovery of species that are at risk, then this underlying theme has to accompany all authorizations or regulatory exemptions. Intent has to be a primary driver, in writing, to hold proponents accountable for their actions, but also to make them stakeholders and not isolated from the legislation and its application within Ontario. One of the major issues with the authorization/regulatory exemption system is the "one size fits all" approach. While I do not have a solution to other means of meeting the purpose of the ESA without authorization/exemption, I do feel the following may help build transparency and a general move towards the underlying "intent" of the Act (i.e. create a more level playing field for all proponents to navigate this system).

*Certifying "experts"* As a consultant I realise there is typically a specific view of the industry by regulatory agencies. I would suggest however that in relation to the ESA consultants and other "experts" are becoming an ever-increasing component of the process and have been for some time. While the ESA is considered a "proponent driven" system, the reality is that most proponents are not "experts" in regards to induvial species and their needs. Most proponents seek or are recommended to seek the advice of "experts" to help them navigate the ESA and its various requirements (from field investigations to mitigation plans and overall benefit permits). Essentially it is unreasonable to assume that most individuals or organizations are likely to be well versed in all of the species and their habitat

requirements protected under the ESA. Unfortunately, with the shear number of species included under the ESA, there is currently no standard method of validating an expert on a particular species. As a certified butternut health assessor (BHA), I have taken specialized training and signed an ethical statement ensuring I will uphold the purpose of the act as it relates to the needs of the Butternut. Unfortunately, other species are not provided the same level of ethical consideration as it relates to the protection requirements of the ESA. If proponents are not able to self assess (i.e. not an expert) and must rely on the advice of an expert to navigate the ESA, species needs and authorization processes, then the "experts" need to be validated in some fashion by the regulatory agency. Signing a code of ethics for specific species or species groups is one way to ensure that proponents are provided with the best available information on a species, and shift a portion of the accountability to the "expert" providing the advice (i.e. if a consultant recommends to a proponent that they should plough a hayfield and plant it as corn prior to initiating environmental studies under a provincial planning process the "expert" is in breech of their ethical commitment). This also gives the regulatory agency (i.e. MNRF etc.) the ability to audit and revoke an "experts" ability to provide proponents advice (i.e. ensure all certified "experts" are operating in a similar fashion) which ultimately benefits the proponent and the species.

*Industry innovation and Feedback* Many of Ontario's endangered and threatened species are inherently poorly studied and many knowledge gaps exist. A science-based approach is important and the assessment process and listing of species in the Province is unique in its science rather than a politically motivated process for listing species (i.e. contrast to the Federal SARA legislation). While academic research is important, industry in Ontario has clearly identified the need for a more "practical" approach to at least some situations. In some instances, "doing something" is often far better than "doing nothing". Allowing businesses to find and implement, then monitor and document industry specific methods of providing "benefit" to a species within the confines of their business may be one of the most important tools to implementing a "stewardship" approach to the provisions of the ESA. Species do not only occupy pristine wilderness and many SAR in the province are intimately tied to a human landscape. Isolating industry from the process only aids to alienate them from the intent of the legislation and regulations. Simply put, proponents feel that the system is onerous because they feel they do not have a "voice" or outlet to feed back into the system in a meaningful manner. While with any law there will be (as discussed elsewhere) some individuals or businesses that look for ways around legislation etc. "most" individuals given the opportunity will often chose to "do the right thing". If industry truly wishes a streamlined proponent driven system, then the onus has to be shifted to the proponent in conjunction with expert advice to demonstrate that the purpose of the act can be met within the confines of their industry. Simply buying into habitat banking etc. while an attractive solution for industry is not a solution which for many species provides benefit in relation to recovery of the species. Barn Swallow may be an excellent example given its usage of the transportation sectors infrastructure (culverts and bridges) as nesting sites. While cumulatively the agricultural industry may collectively own more Barn Swallow habitat than any other sector the ownership of this infrastructure (i.e. barns etc.) is divided amongst multiple stakeholders. Large transportation organizations in the province of Ontario therefore are responsible for a larger stake (as a single organization) of Barn Swallow habitat than any single individual or corporation within the agricultural industry. Therefore, allowing such large organizations to find options for "offsetting" impacts outside of the infrastructure they own brings with it significant impacts to the way Barn Swallows utilize the Ontario landscape as habitat (i.e. eliminating access to millions of bridges and culverts could have serious long-term impacts not previously anticipated in an "offsetting" scenario by regulators). The transportation industry may be more willing to take a

"stewardship" approach to the Barn Swallow if they feel they can have justified influence over the implementation of policies within their sector, as it relates to managing species needs with social and economic drivers. In short culverts and bridges will need to be repaired and replaced. As such, short-term impacts to nesting Barn Swallows will be required, however by giving the industry flexibility long-term gains to the Barn Swallow (i.e. service lifespan of 25-50 years for most bridges and culverts) would provide significant gains. See also the discussion related to regulatory exemptions and Barn Swallow (i.e. other unanticipated impacts to the species under the current system due to lack of options for industry).

Changes to authorizations

Though there may be several other changes which could be applied to the authorization process I offer the following considerations based on my experience with the authorization and regulatory exemption process and the provisions of the ESA:

- Consider revising agency review role in the regulatory exemptions OR standardize qualifications for who can provide services. At present MNRF may audit mitigation plans but there is little information outside of location, species and regulatory exemption being applied for which is sent to MNRF (i.e. MNRF does not have to "approve" the mitigation plan). As such there is little consistency in how proponents navigate the regulatory exemption process or "who" can prepare mitigation plans or similar required key components. Proponents may also "interpret" the intent or meaning of an exemption in a way which is out is not consistent with the species biology or habitat requirements etc.
- If regulatory exemptions are to be kept as part of the authorization process, I suggest reviewing some of the exemptions with wider scope (i.e. exemptions applicable to larger numbers of species) and applying additional restrictions to the species which these exemptions can be used for. A prime example would be the use of Section 23.18 of O.Reg 242/08: Threats to health and safety, not imminent exemption for bridge and culvert replacements or repairs which has been used by the transportation sector to eliminate available habitat for the Barn Swallow. This species in particular is to reliant on human structures and the exemption only requires that a proponent: taking steps to minimize or avoid killing, harming or harassing a member of the species and to avoid damaging or destroying its habitat, during a time of year when the species is likely to be carrying out a life process related to hibernation or reproduction, including rearing. In short, the ledge space the structure provides as nesting opportunities is often removed through repair or replacement rendering the structure unsuitable as a nesting location for the Barn Swallow. Given the service life of most structures (25-50 years) this cumulatively results in significant loss of available suitable structures for the species (i.e. the "intent" or purpose of the Act to promote stewardship is effectively a mute point as proponents interpret the exemption to mean that excluding the birds from nesting in or on the structure during construction eliminates impacts however given the dependence of the species on structures and fidelity to nest sites, rendering a structure unsuitable as a nest location permanently negatively impacts the species during its period of reproduction).
- Consider revising regulatory exemption to eliminate duplicate authorizations (by species or activity) or for activities (kill, harm, harass etc.) which are not permitted under other legislation (see the next comment).

- Consider removing prohibitions under the act which are regulated under other legislation. While this is not directly a change to the authorization process, it does have implications. For example, for species afforded protection under SARA as Aquatic Species or for birds afforded protection under the Migratory Birds Convention Act and SARA exemptions or authorizations under the ESA may under the current system not be permitted by these other pieces of legislation. For example, the Eastern Meadowlark is listed as a Migratory Bird and is listed as a Threatened species under SARA. Due to its dual status under these pieces of legislation impacts to the individual (i.e. kill, harm, harass) are not permitted under these two (2) pieces of legislation. Allowing authorizations to kill, harm or harass the Eastern Meadowlark therefore exempts the proponent from prohibitions under the ESA but these activities are still not permitted (i.e. duplicate protection measures). In essence, this creates confusion, redundancy and the need for authorization under the ESA requirements for activities which are not lawful for proponents to engage in regardless of the authorization granted by the province (i.e. permitted to undertake activity under the provincial legislation). While habitat protection may not be afforded in some circumstances, eliminating the redundant protection and removing the ability for authorization for such activities and differing to other legislation (i.e. at the federal level) would help the province offload responsibility for activities already prohibited in Canada, while reducing or eliminating confusing and overlapping legislation.

<u>How needs of species at risk can be met</u>

There is likely no "one size fits all" solution to meeting species needs given the shear number of species covered by this legislation.

<u>Enhanced inspection and compliance</u>

Based on the presently available authorizations and regulatory exemptions I would suggest that without enforcement there is no way to ensure the purpose of the Act is being met. Lack of enforcement and the assumed lack of penalties or other consequences for infractions under the legislation and regulations tends to lead to a casual attitude to the legislation by proponents.

*Implementing a "duty to report".* At present (unless required by an authorization) there is no duty for a proponent to report sightings of species at risk and no requirement of agents working for those proponents to report species they encounter (weather target species or non-target species) while carrying out field investigations etc. MNRF encourages individuals to report species at risk however with a general lack of enforcement presence this is not sufficient to prevent sometimes serious impacts to species or their habitats. I have personally been put in several situations where based on my understanding of the ESA, its regulations and its purpose proponents have engaged willfully in activities which have resulted in damage and destruction to the habitat of the Bobolink, Eastern Meadowlark, Barn Swallow and Henslow's Sparrow (i.e. species documented through field investigations paid for by the proponent). For many of these species due to their presence on privately owned lands, others would not be aware of their presence (i.e. not publicly viewable based on location of habitat etc.). This unfortunately puts the consultant in a situation of client confidentiality vs unlawful actions under the ESA. In terms of the species, ultimately they loose out, while in terms of the Ontario it creates an uneven playing field where some proponents are rewarded (i.e. project moves forward and, in their eyes, avoids costly delays) for disregarding the provisions of the ESA. Since enforcement presence is limited in the

province and most proponents do not undertake their own targeted field studies, a more leveled "playing field" could be created by requiring service providers to submit observations and notify of activities which contravene the ESA. This is not unprecedented in Canada, and though some proponents may be resistant it may actually lessen the burden on industry (i.e. increase the feedback of occurrence information into NHIC thus impacting future status assessments etc.) and create transparency between proponents, service providers and agencies.

In closing, the above comments are founded on experiences in the past 10 years as it relates to my own personal interaction with the ESA, its regulations and authorizations within the landscape of Ontario. These comments are based on my position as a professional biologist, a naturalist and citizen of Ontario with a vested interest not only in the protection of SAR and their habitat but also in the continued economic development and growth of the Ontario economy in particular as it relates to development, transportation infrastructure, resource management (forestry, aggregates, mining). Given the purpose of the Endangered Species Act, it is my opinion that a moderated approach to revisions, deletions or general changes to the act, the regulations or the permitting and approval process (authorizations and regulatory exemptions) is the most responsible approach to balancing needs of Ontarians and needs of species considered to be at risk. While the immediate benefit to many species may not be apparent at this time in terms of economic factors, all SAR represent natural resources which should be responsibly managed by government, organizations, corporations and private citizens within our province.

Thank you for considering my comment