



March 4, 2019

Public Input Coordinator
 Ministry of the Environment, Conservation and Parks
 Species Conservation Policy Branch
 300 Water Street
 Floor 5N
 Peterborough, Ontario
 K9J 3C7

RE: ProtectNatureTO's Submission - ERO #013-4143 Review of the *Endangered Species Act, 2007*

Dear Sir/Madam,

On behalf of ProtectNatureTO, a coalition of over 20 nature- and stewardship-based groups advocating for the protection of wildlife and improvement of natural areas across the City of Toronto, we offer our comments and recommendations below on the review of the *Endangered Species Act, 2007* (ESA).

The government launched their 10 year review of the ESA under the premise of promoting "positive outcomes for species," despite also apparently wishing to see "efficiencies for business." Worryingly, the language in the accompanying discussion paper points to a red-tape cutting agenda that could put species at further risk.

We are very concerned about the plight of endangered species in Ontario and worry that this latest proposal for comments on the Environmental Registry of Ontario is another environmental deregulation exercise to make it easier for industry and development proponents to proceed with activities that harm species at risk and their habitats. Endangered and threatened species in Ontario have already been deprived of protections due to sweeping exemptions for industry in 2013; now the Ontario government is proposing to further streamline approvals.

The world is facing a biodiversity crisis. The extinction rate is 1,000 to 10,000 times higher than the natural rate. Literally dozens of species are estimated to go extinct every day. Ontario is not immune. **Southern Ontario has the highest number of endangered species in Canada.**

*"The biodiversity imperative is different from other social challenges and we would argue is even more critical than, although certainly related to, climate change. Why? **There is no recovery from extinction, it is forever** and unlike climate change whose impacts will be felt by many of the world's population in the future, biodiversity loss is here now in the present, there is no future discounting."* BIODIVERSITY CONSERVATION-A Call for Action for Canadian Decision-Makers
<https://www.changingtheconversation.ca/biodiversity-action-agenda>

The fact that provincial government is choosing a course that we can reasonably know will create more pressures on an already stressed Ontario's wildlife habitats pushing more species toward extinction is obviously a very serious issue. At this point, these problems are knowable. The consequences for the environment, the species at risk and Ontario biodiversity are predictable. How the government at this point chooses to proceed raises profound questions about our collective obligations to one another, to our society and the entire ecosystem. It raises profound questions about the choices this provincial government is making now as reflected in discussed Review of the *Endangered Species Act, 2007*.

In 2007, a new and improved ESA was celebrated as the strongest species protecting law Canada had ever seen. The new law took a science-based approach, requiring recovery plans for endangered species and automatic protection of their sensitive habitats. At the same time, it offered flexibility to land owners and developers to, under certain conditions, apply for permits for work that could harm species-at-risk or their habitat.

In 2013, for example, a suite of exemptions introduced by the Ministry of Natural Resources and Forestry (MNRF) severely undermined the intentions of the law to protect and recover species at risk in Ontario. MNRF essentially changed the permit system so that a developer only has to minimize harm as opposed to eliminate or compensate for it. Sweeping exemptions for certain industries such as forestry has also increased risk for species like Ontario's threatened boreal caribou.

Echoing the views expressed by numerous nature protection oriented organizations, ProtectNatureTO sees this as an exercise to reduce environmental regulations and to make it even easier for development to proceed. No data or evidence has been provided to back up the challenges outlined in the discussion paper. In fact, the discussion paper seems wholly focused on finding efficiencies for business instead of improving implementation of the regime to protect and recover species in Ontario.

Conclusion:

If the past 10 years of weak ESA implementation and diminishing species numbers should teach us anything, it is that we need to be way more strict and selective about the projects that are permitted to threaten species or damage habitat.

It is time to implement the existing endangered species law and protect species as the law was originally intended to do. Failure, will push more species toward extinction.

ProtectNatureTO fully supports comments and recommendations expressed in the ERO's Submissions by other organizations, particularly:

- **Earthroots ERO Submission:**

The ESA exists to protect and recover species facing extinction in Ontario. Therefore, we support only the direct strengthening of this ESA by:

- Maintaining that every species gets assessed by COSSARO, and if necessary receives a science-based Recovery or Management Strategy, a Government Response Statement and a Progress Report within existing mandated timelines. Any "landscape approach" must exist over and above species-specific regulations.
- Maintaining science-based listing by COSSARO, and abandoning the idea of allowing ministerial discretion regarding habitat and species protection under section 9 and section 10 of the ESA
- Preventing any appeal process to COSSARO assessments and subsequent listing on SARO
- Requiring all proponents of harmful activities to provide an on-the-ground, monitored and enforced overall benefit to impacted species and abandoning your proposal to create an option for such proponents to pay into a conservation fund to compensate for conducting activities that are harmful to species at risk

We ask the Ministry to commit to actual strengthening the ESA by:

- Repealing the exemptions created in 2013 to permit forestry, hydro and mining industries to conduct harmful activities to species at risk
- Repealing the exemption created in 2016 to allow hunting and trapping of the Threatened Algonquin wolf
- Amending section 57 (1)1 of the ESA so that exemptions will only be allowed if they do not jeopardize the survival and/or recovery of Endangered and Threatened species
- Affording section 9 and section 10 protection to any species that has been assessed as Special Concern in two consecutive assessments by COSSARO until such a time when the species' assessment results in downlisting to Not At Risk

- **SUBMISSION REGARDING 10th YEAR REVIEW OF ONTARIO'S ENDANGERED SPECIES ACT: DISCUSSION PAPER ERO NUMBER: 013-4143 by Ecojustice, the Canadian Environmental Law Association ("CELA") and Lintner Law** provide the following comments regarding the 10th year review of Ontario's Endangered Species Act, 2007 ("ESA" or the "Act"):

CONCLUSION

Based on the foregoing reasons, Ecojustice, CELA and Lintner Law provide the following recommendations to the province:

RECOMMENDATION 1: Defer making any decisions about altering the species at risk program until such time as a baseline assessment of “the effectiveness of the program” is completed and made public.

RECOMMENDATION 2: The Province should not advance landscape-level planning in place of species-specific approaches or broad-scale authorizations of harmful activities as they are too coarse a filter to address site-specific or species-specific concerns. Their use does not align with the goals of at-risk species protection and recovery.

RECOMMENDATION 3: There should be no change to the ESA regarding assessment and listing processes, the role of the Committee on the Status of Species at Risk in Ontario, nor alternatives to automatic species and habitat protections.

RECOMMENDATION 4: The Discussion Paper does not provide any explanation as to why timelines are not being met for government response statements or progress reports, nor any discussion of the potential consequences of lengthened timelines on species protection and recovery. Therefore, we do not support any time extensions to the existing process as the need for attention to species recovery is already of high significance at the time of assessment.

RECOMMENDATION 5: Before undertaking any changes to existing authorization processes, the province should publicly disclose existing administrative challenges and uncertainties and only then, develop clear and consistent policies to address identified issues and seek public input.

RECOMMENDATION 6: The government should not simplify requirements for permits under section 17(2)(d) of the Act as it would facilitate the ease with which proponents could act contrary to the purposes of the Act. **The current statutory requirements under section 17(2)(d) should be left untouched, and activities that do not meet the “significant social or economic benefit” test only allowed to proceed under section 17(2)(c).**

RECOMMENDATION 7: The province should not advance alternative authorization processes to exempt certain activities from the permit requirements under the ESA where those processes would afford lesser protections for species at risk and their habitat.

RECOMMENDATION 8: Proponents engaging in harmful activities should be required to submit mitigation plans and monitoring reports to the province, to enhance transparency, accountability and their public availability.

- ERO #013-4143 Review of the *Endangered Species Act, 2007*

On behalf of **Ontario Nature, the David Suzuki Foundation, Environmental Defence and the undersigned organizations**, we offer our comments and recommendations below on the review of the *Endangered Species Act, 2007* (ESA)

“We note, with deep concern, that environmental deregulation – making it easier for industry and development proponents to proceed with activities that harm species at risk and their habitats – appears to be the overall focus and intent of the options put forward for consideration. Reassuring statements that the review is intended to “improve protections,” “improve effectiveness” and provide “stringent protections” (p. 2) are misleading, in light of the actual proposed changes that MECP is inviting the public to consider. These include options that would undermine the very cornerstones of the law: science-based listing (including Indigenous Traditional Knowledge), mandatory habitat protection, and legislated timelines for planning and reporting.”

Recommendation 1: Do not amend the ESA to accommodate landscape approaches to planning, as these are already adequately enabled in sections 13 and 14. When implementing a landscape approach, use it to build on and complement the species-specific requirements set out in the ESA.

Recommendation 2: Do not amend the ESA to authorize harmful activities at a broad scale. Authorizations for harmful activities must address site-specific and species-specific concerns.

No amendments to the ESA are needed to address concerns about notification of new species listings.

No amendments to the ESA are needed to review a COSSARO decision if warranted.

Reconsideration

(2) If a species is listed on the Species at Risk in Ontario List and the Minister is of the opinion that credible scientific information indicates that the classification on the List is not appropriate, the Minister may require COSSARO to reconsider the classification and, not later than the date specified by the Minister, to submit a report to the Minister under section 6 indicating whether COSSARO confirms the classification or reclassifies the species.

Tampering with COSSARO decisions will politicize the process and delay or even prevent recovery efforts.

Recommendation 3: Do not amend the ESA with respect to the listing process or the role of COSSARO. The current ESA provisions provide a high level of credibility, accountability and certainty. The challenges described can and should be addressed through better implementation.

Recommendation 4: Retain automatic protections for threatened and endangered species. The ESA provides more than enough flexibility for proponents of harmful activities through permits and exemptions.

Recommendation 5: Retain the legal requirement to produce Government Response Statements within nine months of listing (sec. 11(8)). Ensure adequate government investment in staffing and consultation to meet this legislated deadline.

Recommendation 6: Retain the requirement to report on progress within five years of the GRS (Government Response Statements)

Recommendation 7: Do not amend the ESA provisions regarding habitat regulations. The law already provides the Minister the power to delay or not proceed with a habitat regulation (sec. 56 (1)c).

Recommendation 8: Do not create a fee-in-lieu conservation fund that will make it easier for industry/development proponents to harm species at risk and damage or destroy their habitats. Continue to require an on-the-ground overall benefit to species negatively affected.

Recommendation 9: Make no changes to requirements for sec. 17(2)d permits. These permits should only be available for projects that “result in a significant social or economic benefit to Ontario” and that will not “jeopardize the survival or recovery of the species in Ontario,” as currently required.

Recommendation 10: Repeal the sweeping 2013 regulatory exemptions for harmful industrial/development activities.

Recommendation 11: Do not amend the ESA to harmonize its requirements with other legislative or regulatory frameworks. There is no need. Use section 18 authorizations, which exist for this purpose. In so doing, retain the requirement to provide an overall benefit to species negatively affected by authorized activities.

Summary remarks

When the ESA was taken out of the hands of MNRF and reassigned to MECP, there was cautious optimism that the new ministry in charge would strike a constructive path forward and prioritize the protection and recovery of Ontario’s most vulnerable plants and animals through its administration of the Act. MECP’s discussion paper suggests, however, that this hope may be ill-founded. Almost all the options put forward for consideration would weaken protections and sacrifice the recovery of species at risk to economic interests. If MECP chooses to compromise the foundations of the ESA – science-based listing, automatic protection of threatened and endangered species and their habitats, and mandatory timelines for planning and reporting – its credibility as the agency responsible for realizing the purpose of the ESA will be shattered.

... Rather than reducing its administrative role and weakening its effectiveness through exemptions, the ministry should embrace its role as a defender of the broad public interest in conserving biodiversity and securing a healthy environment for all. Investing in and incentivizing stewardship would offer, for example, a much more positive and promising means of protecting species at risk than finding new, streamlined approaches to allow proponents of harmful activities to damage and destroy the critical habitats of Ontario’s most vulnerable plants and animals.”

Sincerely,

On behalf of ProtectNatureTO