WWF-Canada Submission to Endangered Species Act Review

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

Introduction:

On behalf of WWF-Canada, we offer the following comments on the review of the *Endangered Species Act, 2007* (ESA). As a wildlife conservation organization, we are deeply concerned about the loss of wildlife in Canada. Our Living Planet Report Canada (2017) found that half of monitored vertebrates in Canada have declined since 1970, and it is well documented that species at risk continue to experience population declines even after receiving protections under federal and/or provincial legislation. Our protections to date have not been enough, with new species regularly added to the list of 243 endangered species in Ontario, while very few recover and make it off the list completely.

WWF-Canada is concerned that the current review of the ESA is not prioritizing what it should: species at risk recovery. Instead the review is emphasizing the creation of "efficiencies for business", which would likely come at the expense of these species and their habitat.

Overall, we believe that the challenges outlined in the discussion paper have resulted from poor implementation of the ESA as opposed to challenges with the law itself.

Responses to the Discussion Paper Questions:

Focus 1: Landscape approaches
Discussion Questions: *In what circumstances would a more strategic approach support a proposed activity while also ensuring or improving outcomes for species at risk? (e.g., by using a landscape approach instead of a case-by-case approach, which tends to be species and/or site-specific.). Are there existing tools or processes that support managing for species risk at a landscape scale that could be recognized under the Endangered Species Act?*

- Both landscape level and species level approaches are needed, and the law should not be changed to allow for landscape approaches instead of species-specific approaches. Instead, the landscape approaches should be developed to complement species-specific approaches. The fine scale of species-specific status assessments, listings and protections is needed and must not be abandoned. The ESA already provides for an ecosystem approach to recovery planning (sec. 13, 14). There is no legal barrier to other tools and processes that would advance the recovery of species at risk. No change to the law is needed.

- The discussion paper indicates that the government is considering not only landscape-level planning but also broad-scale authorizations of harmful activities. Authorizing harmful activities

at a broad scale is inappropriate for endangered and threatened species. It doesn't lend itself to addressing site-specific or species-specific concerns and consequently presents unwarranted additional risk for species already in peril.

Focus 2: Listing process and protections

Discussion Questions: *What changes would improve the notification process of a new species being listed on the Species at Risk in Ontario List? (e.g., longer timelines before a species is listed.). Should there be a different approach or alternative to automatic species and habitat protections? (e.g., longer transition periods or ministerial discretion on whether to apply, remove or temporarily delay protections for a threatened or endangered species, or its habitat.). In what circumstances would a different approach to automatic species and habitat protections be appropriate? (e.g., there is significant intersection between a species or its habitat and human activities, complexity in addressing species threats, or where a species' habitat is not limiting.). How can the process regarding assessment and classification of a species by the Committee on the Status of Species at Risk in Ontario be improved? (e.g., request an additional review and assessment in cases where there is emerging science or conflicting information.)*

- WWF does not agree with the idea proposed in the discussion paper that the listing and notification processes are insufficient, and that timelines need to be lengthened. Improving notification to the public of listing decisions is a communications issue which should be addressed through better communications, and not through a change to the Act. In its listing process, COSSARO is required to consider species listed by the federal Committee on the Status of Endangered Wildlife in Canada (COSEWIC) (sec. 4(2)a), and thus the listing of a species should come as no surprise. There are years of inherent notice embedded in this process, from the release of COSEWIC status reports to the listing by COSSARO.
- There should be no change to the role of the Committee on the Status of Species at Risk in Ontario (COSSARO), or to the listing and assessment processes. Science-based assessment and listing of species at risk by COSSARO (sec. 3 – 8) and automatic protections of listed species and their habitats (sec. 9, 10) are cornerstones of the ESA and must remain intact.
- The law sets out a transparent approach to listing based on a consideration of "the best available scientific information, including information obtained from community knowledge and aboriginal traditional knowledge." (sec. 5(3)). Tampering with COSSARO decisions will politicize the process and delay recovery efforts.
- There should be no alternative to automatic species and habitat protections. There should be no ministerial discretion to remove or delay protections. The ESA already provides more than enough flexibility for proponents of harmful activities through permits and exemptions.

Focus 3: Recovery Policies and Habitat Regulations

Discussion Questions: *In what circumstances would a species and/or Ontarians benefit from additional time for the development of the Government Response Statement? (e.g., enable extending the timeline for the Government Response Statement when needed, such as when recovery approaches for a species are complex or when additional engagement is required with businesses, Indigenous peoples, landowners and conservation groups.). In what circumstances would a longer timeline improve the merit and relevance of conducting a review of progress towards protection and recovery? (e.g., for species*

where additional data is likely to be made available over a longer timeframe, or where stewardship actions are likely to be completed over a longer timeframe.). In what circumstances is the development of a habitat regulation warranted, or not warranted? (e.g., to improve certainty for businesses and others about the scope of habitat that is protected.)

- Lengthening timelines on the Government Response Statement (GRS) could have dire consequences for species at risk, and these consequences were not considered in the discussion paper. There should be no change to the legal requirement to produce GRS within nine months of listing (sec. 11(80)). The GRS can stipulate the government's intentions regarding consultation, with timelines. Failure to meet the legislated deadline is an implementation issue. Adequate government investment in staffing and consultation are needed to meet deadlines.
- The required five-year reporting on progress is reasonable and should not be changed. If anything, five years for the government to report that they are engaging on meaningful action to recover a species is already a generous timeframe. Reporting ensures transparency and accountability. It also provides an impetus for action, ensuring that effectiveness is assessed, and contributes to institutional learning and ongoing improvements. The government should consider legislating additional reporting requirements to ensure ongoing monitoring beyond the first five-year report, as one report is not sufficient to track progress on recovery for species (in particular those with long generation times, as noted in the paper).
- The ESA already allows the Minister to delay the development of a habitat regulation (sec. 65 (1)b) or to not proceed with a habitat regulation (sec. 56 (1)c). No change to the law is needed. Habitat regulations, which describe specific boundaries or features of areas deemed to be habitat, provide enhanced certainty for implementation of the ESA. They also provide an opportunity to protect areas where a species "used to live or is believed to be capable of living" (sec. 55(3)b), presenting a significant opportunity for protection and recovery efforts to extend beyond places where species at risk currently persist. There should be no changes to the legal provisions regarding habitat regulations.

Focus 4: Authorization Processes

Discussion Questions: *What new authorization tools could help businesses achieve benefits for species at risk? (e.g., in lieu of activity-based requirements enable paying into a conservation fund dedicated to species at risk conservation, or allow conservation banking to enable addressing requirements for species at risk prior to activities.). Are there other approaches to authorizations that could enable applicants to take a more strategic or collaborative approach to address impacts to species at risk? (e.g., create a new authorization, such as a conservation agreement.). What changes to authorization requirements would better enable economic development while providing positive outcomes and protections for species at risk? (e.g., simplify the requirements for a permit under s. 17(2)d, and exemptions set out by regulation.). How can the needs of species at risk be met in a way that is more efficient for activities subject to other legislative or regulatory frameworks? (e.g., better enable meeting Endangered Species Act requirements in other approval processes.), In what circumstances would enhanced inspection and compliance powers be warranted? (e.g., regulations.)*

- There are already many flexibility mechanisms in the ESA to allow harmful activities to proceed. The options under consideration reflect a desire to make it easier for industry and development proponents to proceed with harmful activities. This direction is inconsistent with the purpose of the ESA which is to protect and recover species at risk. Protection and recovery must be the priority. Wherever and whenever harmful activities are allowed, authorizations should be premised on providing an overall benefit to the species.
- There are already enough authorization tools. No new tools are needed. Challenges should be addressed through improved implementation.
- Proponents of harmful activities should not be allowed to simply pay into a conservation fund rather than meet current requirements to provide an on-the-ground overall benefit to species that they negatively impact. There is no guarantee that a fund would result in tangible benefits for the impacted species at risk.
- Do not simplify requirements for sec. 17(2)d permits. These are intended to be available only 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." These are appropriate requirements and ensure that such permits are issued only an exceptional basis.
- Do not simplify requirements for exemptions through regulation. On the contrary, make the requirements more stringent by amending the law (sec. 57(1)1) to ensure that exemptions cannot jeopardize the survival or recovery of threatened or endangered species.
- Strengthen protections for species at risk by repealing the long list of exemptions for forestry, hydro, mining, aggregate extraction, commercial development and wind facilities, approved by Cabinet in 2013. The 2013 exemptions have become the primary means for allowing harmful activities to proceed. As of October 11, 2017, there had been 2,065 registrations for exemptions and about 85 percent of these were for activities that violate ESA protections for species at risk and their habitats.
- Section 18 of the ESA already provides a means to harmonize its requirements with other legislative or regulatory frameworks. The issue is implementation and ensuring that the high standards of the ESA, including the achievement of overall benefit to species affected by harmful activities, are upheld. No legislative change is needed.
- Monitoring of compliance and enforcement must be improved regarding activities proceeding through permits and exemptions. This is first and foremost an implementation issue and requires adequate investment.
- Enhance transparency and accountability by amending Ontario regulation 242/08 to require proponents of harmful activities to automatically submit their mitigation plans and annual reports to the government and to ensure that these are publicly available (e.g., hydro-electric generating facilities (sec. 23.12(1) 5 and 7).
- Invest in and incentivize stewardship. Implement stewardship agreements (sec. 16). This requires no legal change, but rather investment in outreach to landowners, program development and staffing.