

May 18, 2019

Public Input Coordinator
Ministry of the Environment, Conservation and Parks
Species Conservation Policy Branch
300 Water Street
Floor 5N
Peterborough, Ontario
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Dear Sir/Madam,

RE: ERO #013-5033 Review of the *Endangered Species Act, 2007*

We, the undersigned organizations, strongly oppose proposed changes to the *Endangered Species Act, 2007* (ESA) put forward in Schedule 5 of Bill 108. The changes contained in Schedule 5 will strip Ontario's most vulnerable plants and animals of crucial legal protections. They are inconsistent with the purpose and intent of the ESA, which is to protect and recover species at risk in this province. They 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. They would create many new loopholes for industry and development proponents, making it easier to proceed with activities that harm species at risk and their habitats.

We urge the government to remove Schedule 5 in its entirety from Bill 108 and thus not to proceed with the proposed changes to the ESA.

Below we outline our specific concerns about Schedule 5.

1. Assessing and listing species at risk

The changes proposed would undermine the ESA's transparent, science-based approach to assessing and listing species at risk and could delay or prevent species from being added to the Species at Risk in Ontario (SARO) list, further threatening their survival and recovery.

- i. *Delay in listing of species assessed by the Committee on the Status of Species at Risk in Ontario (COSSARO).* Currently species must be listed within three months of COSSARO's submission of an assessment report to the Minister. This timeline would be extended to 12 months (proposed subsection 7(4)), during which time species at risk and their habitats would be unprotected and vulnerable to harmful actions taken by those wishing to avoid pending ESA restrictions.
- ii. *More discretion for the Minister to second-guess assessments by COSSARO, resulting in delays in recovery planning and protections.* The ESA already allows the Minister to request a review of a COSSARO decision if "credible scientific information" indicates the listing "is not appropriate" (sec. 8(2)). The new language proposed in the Bill changes this to "may not be appropriate" (proposed subsection 8(2)), opening the door more broadly to challenge

- COSSARO decisions. Requests for reassessment would delay both planning (Recovery Strategies, Management Plans) and protections, which are triggered by listing. Currently, a species is listed regardless of a request for reassessment. Under the proposed system, however, the species would not be listed until the reassessment is completed (proposed subsections 8 (3) and (4)). Since there is no specified timeline for the reassessment process, this change introduces the possibility of indefinite delays, politicizing the process and making it possible for developers to derail the listing process if they don't like a COSSARO decision.
- iii. *Requirement that COSSARO assessments be based not on the condition of a species in Ontario, but instead on its condition across its “biologically relevant geographic range”* (proposed subsections 5(4) and (5)). Most species now listed as threatened or endangered in Ontario, which are considered to be more stable in the United States, could be delisted (e.g., during regular reassessment processes) and receive no protection as a result. Most of the plants and animals that could be affected are ‘edge of range’ species at their northern limit in Canada. Edge of range species generally are considered important in conservation efforts, particularly in an era of climate change. They may be better adapted to extreme climates than core populations or may have other characteristics that will facilitate adaptation. Excluding them from protection could result in a significant loss of genetic diversity and reduce the ability of species to persist, for example through geographic range shifts. Many of these species are also important culturally, socially or economically. Their continued decline or disappearance from Ontario could be deeply felt by communities and individuals across the province. Further, the proposed approach could prevent new listings of and thus legal protections for species that are in trouble in Ontario but not yet listed.
 - iv. *Broadening of COSSARO membership so that it includes other than scientific experts* (proposed subsections 3(4) (a) and (b)). Currently COSSARO members must have expertise in (a) a scientific discipline such as conservation biology, population dynamics, taxonomy, systematics or genetics; or (b) aboriginal traditional knowledge. Such qualifications ensure the credibility and transparency of the assessment and listing process.

2. Species and Habitat Protections

The proposed changes, including delaying or limiting protections for species and their habitats at the discretion of the Minister, would allow short-sighted economic or political interests to override the protection and recovery of species at risk. The ESA already provides ample flexibility to consider socio-economic issues and to accommodate proponents of harmful activities through permits and exemptions (sec. 17, 18, etc.). Credibility, transparency and certainty require protections that are science-based and not politically motivated.

- i. *De-coupling the process of listing species at risk from the automatic protections provided under the ESA for threatened and endangered species and their habitats.* The Minister would be allowed to suspend species and habitat protections for newly listed species for up to three years based on social or economic considerations (proposed subsections 8.1(3)(b) and (5)(b)).
- ii. *One-year delay in the application of automatic protections for newly listed species for existing permit/agreement holders* (proposed subsections 8.2(1) and (2)).
- iii. *Ministerial discretion to limit protections for species and their habitats so that they apply only in specific geographies or in specific circumstances.* This could exclude important habitats and species from protection (proposed subsections 8(1)(1.2) and (1.3)).

3. Species at Risk Recovery Policies

The proposed changes below would delay required policies and reports and reduce public scrutiny.

- i. *Ministerial discretion to delay indefinitely the development of Government Response Statements (GRS).* These species-specific government policies stipulate the government's plans and commitments for actions that it will undertake or support to advance species recovery. Currently a GRS must be produced within nine months of the publication of a Recovery Strategy (for threatened or endangered species) or a Management Plan (for special concern species). The proposed change would allow the Minister to delay the development of a GRS indefinitely, as long as a notice is published on a government website (proposed subsection 12.1(4)).
- ii. *Removal of requirements to post notices on the Environmental Bill of Rights Registry when the Minister publishes Recovery Strategies or Management Plans.* As with the GRSs, notices would be published on an unspecified government website instead of the Environmental Bill of Rights Registry (proposed subsections 11(5) and 12(4)). It is unclear whether notices on the new website would be as transparent and accessible as they currently are on the Environmental Bill of Rights Registry, which "entrenches the rights of the public to receive notice of and provide input into environmentally significant acts, regulations and policies" (Environmental Commissioner of Ontario, 2013, p. 34). This change could potentially shut out opportunities for public consultation regarding government policies and reduce government accountability to the public.
- iii. *Ministerial discretion to delay carrying out a review of progress towards the protection and recovery of species.* Currently, the Minister is required to conduct a review of the progress made towards the protection and recovery of a species no later than five years after publication of a GRS. The proposed amendment allows the Minister to specify, in the GRS, any time period to carry out the review (proposed subsection 12.2(2)(a)). The requirement to report on progress within five years of the release of the GRS is reasonable and should not be changed. Reporting ensures transparency and accountability. It also provides an impetus for action, ensures that effectiveness is assessed, and contributes to institutional learning and adaptive management.

4. Permits, agreements and exemptions to allow harmful activities

There are many mechanisms in the ESA, including permits, agreements and regulatory exemptions, that allow harmful activities to proceed as long as certain conditions are met. The ESA sets a high standard for permits, based on providing an overall, on-the-ground benefit to species negatively impacted by development. The standard for exemptions, however, is generally much lower and requires only mitigation of harm.

The proposed changes would 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. Wherever and whenever harmful activities are allowed to proceed, authorizations should be premised on providing an overall, on-the-ground benefit to the species affected. While authorization processes may result in delays, enabling economic

development is not the purpose of the act. Even routine activities can have devastating cumulative impacts – aptly described as “death by a thousand cuts.”

- i. *Allowing proponents of harmful activities to pay into a fund in lieu of fulfilling on-the-ground requirements that would otherwise be imposed under the ESA (proposed section 20).* A fee-in-lieu fund is an easy way out for proponents of harmful activities that reduces transparency and accountability. Proponents would be able to dodge the current requirement of permit-holders to provide an on-the-ground overall benefit to species negatively impacted. The easier it is to obtain an authorization for harmful activities, the more likely they are to occur. Habitat loss and degradation are by far the most significant drivers of species decline, underlining the importance of on-the-ground reparation for authorized damage or destruction.
- ii. *Removal of the requirement for the Minister to consult with an independent expert and to obtain Cabinet approval prior to issuing permits for harmful activities that would provide a significant social or economic benefit to Ontario (section 17(2)d permits).* The proposed changes would undermine the rigour and credibility of the Minister’s decision. Currently the ESA requires the expert consulted to submit a report on the potential impacts of the proposed harmful activities on the species at risk, including an opinion on “whether the activity will jeopardize the survival or recovery of the species in Ontario.” It also requires Cabinet approval, premised on the authorized harmful activities being deemed to be of provincial significance. Removing these requirements would make it easier for such projects to proceed without adequate review or consideration.
- iii. *Removal of the requirement for the Minister to consult with an independent expert regarding the potential impact of a regulation (e.g., an exemption regulation) on species at risk if it is likely to jeopardize the survival of the species in Ontario.* This change would make it easier to pass regulations that could result in serious harm to species at risk and their habitats. It would undermine the rigour and credibility of the Minister’s decision.
- iv. *Removal of protections for individual members of a threatened or endangered species.* Those authorized by a permit to proceed with harmful activities would no longer be required to take measures to avoid adverse impacts to **individual members** of a species (subsections 17(2)(c)(iii) and 17(2)(d)(v)). Instead, permit conditions would require only that measures be taken to avoid adverse impacts to affected species. The fine filter of protection for individual plants or animals would no longer apply, leaving the door wide open to incremental loss with untold cumulative impacts.
- v. *Creation of “landscape agreements” for proponents undertaking multiple harmful activities throughout a geographic area (proposed section 16.1).* This broad-brush approach is a new form of exemption for those carrying out harmful activities across the landscape. It doesn’t lend itself to addressing site-specific concerns and consequently presents unwarranted additional risk for species already in peril. Further, though the proponent is required to undertake beneficial activities, these do not need to benefit all of the threatened or endangered species that are negatively impacted. In fact, they need only benefit one species to qualify. The other species at risk would be subject to harm with no compensation throughout the area covered by the landscape agreement.
- vi. *Removal of the current requirement to provide an overall benefit to negatively impacted species when harmful activities approved under other pieces of legislation are authorized to proceed under section 18 of the ESA.* Section 18 of the ESA already provides a means to

harmonize its requirements with other legislative or regulatory frameworks. But it is premised on providing an overall benefit to species negatively impacted. This high standard is intended to promote species recovery, whereas the proposed change aims only to ensure that steps are taken to minimize adverse effects.

Summary remarks

On May 6th, only four days after the Government of Ontario tabled Bill 108 and Schedule 5, the United Nations released a report documenting extinction rates unprecedented in human history. According to the Chair of the UN's Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), "The health of ecosystems on which we and all other species depend is deteriorating more rapidly than ever. We are eroding the very foundations of our economies, livelihoods, food security, health and quality of life worldwide" (IPBES media release, May 6, 2019, Paris). Species and ecosystems in Ontario are very much part of this global trend, and thus the report provides an appropriate frame for understanding the broad implications of the proposed changes to the ESA. These changes would weaken, delay, limit and remove protections for Ontario's most vulnerable plants and animals and in so doing contribute to further biodiversity decline across the province. They amount to nothing less than a proposal to sacrifice the recovery of species at risk to those with vested short-term economic interests in unbridled development.

We urge the government to remove Schedule 5 in its entirety from Bill 108.

Thank you for your attention.

National, Provincial, and Regional Organizations

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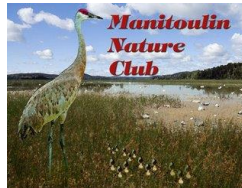
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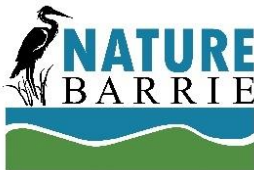


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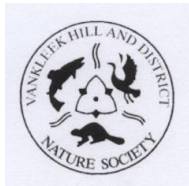
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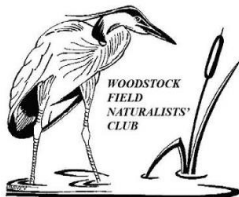
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