

17 May 2019

To Whom it May Concern:

The Mississaugas of the Credit First Nation (“MCFN”) submits the following comments in respect of the amendments to the *Endangered Species Act*, R.S.O. 2007 that are being proposed in Bill 108, *More Homes, More Choice Act, 2019*.

MCFN has grave concerns regarding these amendments, and what they could mean in respect of the protection of critical and culturally important species. In our view, the proposed amendments eat away at the protections for threatened and at-risk species in Ontario that exist under the current version of the *Endangered Species Act*. The potential implications of these amendments is the extinction or the increased likelihood of extinction of species that are of importance to MCFN.

MCFN Rights and Territory

MCFN’s traditional territory spans from Long Point on Lake Erie to the Niagara River, then down the River to Lake Ontario, northward along the shore of the Lake to the River Rouge east of Toronto, then up that river to the dividing ridges to the head waters of the River Thames, then southward to Long Point, the place of the beginning (the “Territory”).


MCFN asserts Aboriginal rights not only to continued use of the lands, waters, and watershed ecosystems within its Territory for a variety of livelihood, harvesting, ceremonial and spiritual purposes, but also to maintain the health and conservation of vital medicinal plants and animals within its Territory. This latter right is also recognized as being protected under Article 24 of UNDRIP. We have a duty and stewardship responsibility to protect the integrity of this Territory.

The Proposed Amendments

The amendments to the *Endangered Species Act* proposed in Bill 108 that MCFN has particular concerns with include the following:

1. *Suspending protections for listed species.* The new section 8.1 would allow the Minister to suspend some or all protections for species newly listed as either threatened or endangered for up to three years, if certain conditions are met.



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2. *Allowing industry activities to continue despite impacts on listed species.* The proposed amendments also provide developers, industry, and others who impact the habitat of a species listed as either threatened or endangered with a range of options to continue their activities. For example:
 - a. for a period of 1 year after a species is listed as endangered/threatened for the first time, some of the prohibitions on listed species (e.g. prohibitions on killing, transporting, selling a species) will not apply to people who were issued permits to engage in activities before the species was listed (the new section 8.2); and
 - b. the Minister can make regulations limiting the application of the prohibitions on certain activities affecting a species listed species (e.g. by indicating that some of the prohibitions do not apply to certain activities, or by limiting the geographic areas in which they do apply; etc. (the new section 9 (1.2) to (1.4));
 3. *Landscape agreements.* The new section 16.1 enables the Minister to enter into ‘landscape agreements’ with others, where such agreements can authorize a person to engage in activities in a certain geographic area that would otherwise be prohibited under the Act because they affect a listed species. While the agreements would require the person or proponent conducting the activity to undertake some “beneficial actions that will assist in the protection or recovery of one or more species”, the species that benefit from do not necessarily have to be the ones impacted by the activity. There is also no mention or requirement that First Nations must be consulted or even notified, if and where these agreements are negotiated.

Impact of the Proposed Amendments

Altogether, the proposed amendments eat away at the protections for threatened and at-risk species in Ontario that exist under the current version of the Act. These changes noted above can contribute to the extinction or the increased likelihood of extinction of species that are of importance to MCFN, thereby compromising MCFN’s right and stewardship responsibility to protect the health of those species and their habitat.

In addition, these landscape agreements will effectively allow certain activities to continue, despite the potential impacts of those activities on threatened or endangered species and their habitat. What is more, the amendments suggest that the landscape agreements can be negotiated without the knowledge or involvement of, and consultation with, First Nations.

MCFN Recommendations

MCFN’s view is that these amendments should not be made.



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However, should the Government go ahead with the amendments, then MCFN is of the view that language should be incorporated into the amendments that requires consultations with First Nations where landscape agreements are negotiated, and where there is the potential for that agreement or the activities that will be permitted under that agreement to affect the rights and interests of a First Nation. This is particularly important where the landscape agreement is to cover a geographic area that falls within the traditional territory of a First Nation.

In addition, if and when the Minister proceeds to make regulations limiting the application of prohibitions on certain activities affecting a species listed species, MCFN should be meaningfully consulted on the development of those regulations. The Crown’s regulatory schemes must provide a meaningful opportunity for consultation and accommodation of MCFN, where MCFN’s asserted or proven Aboriginal and Treaty rights are implicated. As the Crown develops these regulations, it must provide for meaningful consultation and accommodation

MCFN is particularly concerned with the amendments above. However, MCFN would like to take this opportunity to provide some additional comments and queries in respect of the *Endangered Species Act*, and in response to what Ontario has claimed the new approach to species protection that is adopted in the Act to achieve. These are outlined in the table below.

ONTARIO’S PROPOSAL	MCFN COMMENT/QUERY
The new approach will include advice from an independent scientific committee.	There is no reference to traditional or local knowledge in this context. Traditional and local knowledge may be a key source of data for managing species at risk on the ground.
The new approach will enhance government oversight and enforcement powers to ensure compliance with the Act.	There is no defined process or content included for what constitutes oversight, enforcement, and compliance. How will oversight, enforcement, and compliance work on the ground?
The new approach will improve transparent notification of new species’ listings.	This notification process should encompass opportunities that progress to consultation.
The new approach will allow the Minister to require The Committee on the Status of Species at Risk in Ontario (“COSSARO”) to reconsider the classification of a species.	There is only reference to science informing these decisions. There should be a reference to and an opportunity for Indigenous knowledge to inform these decisions.



	In addition, under what conditions would the Minister deem a classification to no longer be appropriate?
The new approach will broaden COSSARO member qualifications.	There is no reference to qualifications of Indigenous knowledge or having members who are Indigenous community knowledge holders.
The new approach allows for a pause of the protections for listed species and of pausing protections from posting on Ontario's Environmental Registry and consultation requirements. This is being proposed to preserve the ability of the Minister to act swiftly and minimize associated social or economic impacts.	Do social and economic impacts trump listed species at risk protections and consultation requirements with Indigenous communities?

Thank you,



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 Director, MCFN-DOCA

