



May 18, 2019

WWF-Canada Submission to Endangered Species Act Proposed Changes

RE: ERO# 013-5033 10 Year Review of Ontario's Endangered Species Act, 2007: Proposed Changes

On behalf of WWF-Canada, we offer the following comments on the proposed changes of the Endangered Species Act, 2007 (ESA), put forward in Schedule 5 of Bill 108, an omnibus bill tabled on May 2, 2019.

Introduction:

As a wildlife conservation organization, WWF-Canada is deeply concerned about the loss of biodiversity in Canada and around the world. The recent IPBES 2019 Global Assessment Report on Biodiversity confirmed that the science has never been more clear, or more urgent: wildlife loss is a global crisis and species around the world are declining at unprecedented rates. Today, one million plants and animals around the world are threatened with extinction in the coming decades.

Canada is not immune to these losses. WWF-Canada's Living Planet Report Canada (2017) found that half of monitored vertebrates in Canada have declined since 1970. New species are regularly added to the list of 243 endangered species in Ontario, while very few recover and make it off the list completely. Clearly, our actions to protect species to date have not been enough, and governments have a critical role to play in the fight against biodiversity loss.

WWF-Canada is deeply concerned with the Government of Ontario's proposed changes to the ESA. They threaten to roll back protections for Ontario's species at risk, making it easier to sacrifice vulnerable species and their habitats in the interests of industry or development.

The Endangered Species Act should put the needs of species at risk first, not those of development.

The changes contained in Schedule 5 will remove protections for the province's most vulnerable plants and animals, by delaying the classification and listing of new at-risk species, removing requirements to consult with expert scientists, as well as allowing new ways for the government to authorize exemptions to the Act's prohibitions for killing species at risk and their habitats.

With such strong evidence of biodiversity loss, both in Ontario and around the world, this is not the time to be weakening species at risk legislation.

WWF-Canada therefore recommends that Schedule 5 of Bill 108 should be immediately withdrawn by the Ontario government.

Below is a list of the proposed changes and WWF-Canada's concerns and recommendations:

1. Assessing and listing species at risk in Ontario

The government is proposing to:

- Extend the time from when a COSSARO report is received by the Minister to when listing is to occur from three to twelve months (i.e., when a species must be added to the SARO List).
- Allow the Minister to require COSSARO to reconsider the classification of a species where the Minister forms the opinion based on scientific information that the classification may no longer be appropriate. For species that are not yet on the list or are listed as special concern, the proposed changes provide that the species would not be added to the SARO List or listed to a more endangered status during COSSARO's re-assessment.
- Require COSSARO to consider a species' condition around its broader biologically relevant geographic area, inside and outside Ontario, before classifying a species as endangered or threatened. If the overall condition of risk to the species in the broader biologically relevant geographic area is lower, COSSARO would be required to adjust the species' classification to reflect its overall condition.
- Broaden COSSARO member qualifications to include members who have relevant expertise in ecology, wildlife management, as well as those with community knowledge.

WWF-Canada's Response:

- Do not extend timelines to twelve months. Extending timelines could be detrimental for species at risk, 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.
- There should be no change to the ESA regarding the listing process and the role of COSSARO. Science-based listing of species at risk by COSSARO and the automatic protection of listed species and their habitats are cornerstones of the ESA and provides certainty.
- Do not change the existing COSSARO process for considering a species' condition based on its broader range outside of Ontario. This puts the onus on other governments to protect wildlife and shirks Ontario's responsibilities. The Carolinian Zone of Ontario is home to one third of Canada's species at risk and is a hotspot for biodiversity. Many Carolinian species are at the northern tip of their range in Ontario, and it is critical to protect these habitats, as ranges are shifting under changing climate conditions and species are actively moving into Ontario from other regions.
- Do not broaden COSSARO membership. 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)).

2. Species and habitat protections

The government is proposing:

- To de-couple the process of listing species at risk from the automatic protections provided under the ESA for threatened and endangered species and their habitats, and to provide greater Minister's discretion on protections. The proposed changes would provide the Minister

with authority to temporarily suspend species and habitat protections for up to three years for some newly-listed species when the specified criteria are met.

- To delay the application of automatic protections for newly listed species for one year for existing permit/agreement holders.
- To allow the Minister to limit protections so that they apply only in specific geographies or in specific circumstances.

WWF-Canada's response:

- There should be no alternative to automatically protecting threatened or endangered species and their habitats upon listing. Allowing the Minister to suspend species and habitat protections for up to three years based on social or economic considerations is too long for species in need of protections to wait.
- Do not allowing the Minister to remove or delay protections. This could exclude important habitats and species from protection.

3. Species at risk recovery policies

The government is proposing:

- To give the Minister discretion to extend the nine-month Government Response Statement development timeline, for some species.
- To clarify that recovery strategies are advice to government, and that Government Response Statements are the government's policy direction for species at risk.
- To allow the Minister to extend timelines for conducting the review of progress towards protection and recovery based on individual species' needs.
- To remove duplicative requirements by removing specific reference to posting under the *Environmental Bill of Rights, 1993* and instead requiring that certain products under the Act be made available publicly on a government website.

WWF-Canada's Response:

- There should be no change to the legal requirement to produce a GRS within nine months of the release of Recovery Strategies or Management Plans. Legislated timelines are intended to ensure that actions needed to recover species occur without undue delay. Failure to meet the legislated deadlines is a problem that should be addressed through improved implementation, not weakening of the law.

4. Issuing *Endangered Species Act* permits and agreements and developing regulatory exemptions

The Government is proposing:

- To allow 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. This includes the requirement for operators to provide an overall benefit to the species, which is currently a requirement of permits.

- To remove 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). Currently the law requires the consulted expert 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, based on the premise that the authorized harmful activities are of provincial significance.
- To remove 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.
- To remove the requirement that measures to avoid adverse impacts to individual members of a species be taken by proponents of harmful activities (under a section 17 permit). 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 death by a thousand cuts.

WWF-Canada’s response:

- Proponents of harmful activities should not be allowed to simply pay into a fund rather than providing on-the-ground reparation for damage done. This reduces accountability and facilitates harm to species at risk and their habitats. Retain the current requirements to provide overall benefit to species harmed.
- Do not remove the requirement to obtain Cabinet approval or to consult with an independent expert regarding 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 on an exceptional basis.
- Do not remove the requirement for the Minister to seek an independent opinion on regulations that might jeopardize the survival of a species in Ontario. That would only make it easier for harmful activities to proceed without proper scrutiny.
- The ESA (sec. 18) provides a means to harmonize its requirements with other legislative or regulatory frameworks, based on the standard of providing an overall benefit to negatively impacted species. Unless this standard is maintained, species will continue to decline.

5. Enforcement

The government is proposing to apply inspection powers to harmful activities allowed through regulatory exemptions.

WWF-Canada’s Response:

- Although we agree that inspection and enforcement is an important component to include, enforcement will be of extremely limited value to protecting species at risk and their habitat from harm due to the large number of exemptions permitted by the Act.