

NORTHWATCH

January 20, 2020

Troy Anthony
Crown Forests and Lands Policy Branch, Ministry of Natural Resources and Forestry
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Sault Ste. Marie, ON P6A 6V5

SENT BY EMAIL cfsaspeciesatrisk@ontario.ca

Dear Mr. Anthony:

ERO number 019-1020

Re. Proposed changes to the Crown Forest Sustainability Act, 1994

On 20 December 2019 ERO posting #019-1020 was added to the Environmental Registry of Ontario, giving notice that the public had only 31 days to comment on a proposal to permanently exempt forestry operations from the provisions of the Endangered Species Act.

Northwatch has both process-related and substantive concerns about this proposal, as set out below.

Northwatch is an environmental non-governmental organization based in northeastern Ontario. Founded in 1988 to provide a regionally representative voice on environmental and social concerns, Northwatch has been an advocate for healthy natural and human communities since its inception, and has been active in forest policy and forest management planning for over three decades.

Process-related concerns

In addition to the substantive concerns outlined in later sections of this submission, Northwatch has a number of process or procedurally related issues related to this proposal. They include:

- The Notice Period was too short. This is a major proposed change with serious ramifications and a posting for only 31 days would be inadequate at any time, but a posting for only 31 days which fall in a period which spans the winter holiday season – including Channukah, Christmas and New Years – is even more grievously so.
- There was insufficient information supporting the proposal. The Environmental Registry posting provided only very general statements and no supporting documents were linked or otherwise made available that provided scientific or other information that actually supported the proposal.



- Posted as policy when it applies to an Act. The Environmental Registry includes different types of notices, and users (may) search the registry according to the type of posting. Types of postings include Policy, Regulation, Act, Instrument, Bulletin or Appeal. The notice type was indicated to be for a “Policy”, whereas the post was in fact for a proposed change to an Act.
- Posting is concurrent with several other major forest-related postings. Concurrent to overlapping the 31 day comment period for ERO # 019-1020, there are seven additional notices for proposed changes to forest-related policy or regulations, several or all of which have some commonality with this ERO notice. In addition, on 18 April 2019 there was a notice posted as ERO #013-5033 that the government was contemplating changes to the Endangered Species Act and inviting comment over a thirty day period. No decision notice has been posted with respect to this ERO notice. Having multiple overlapping policy and regulatory proposals for change underway concurrently with no cohesive framework or coordinated timeline is not conducive to effective public consultation or achieving the most sound policy or regulatory arrangements.

As a remedy to the above noted process concerns, Northwatch strongly encourages the Ministry of Natural Resources and Forestry to rethink their approach, and make the following adjustments:

- Extend the comment period to one that aligns with other related postings and provides a more appropriate opportunity for public comment
- Update the posting to provide analysis and information which supports the proposal, should that be possible
- State clearly in Decision notice that it will be reposted with appropriate details as notice of a proposed change to an “Act”, should the MNRF decide to persist in this direction
- Place this proposed change within the broader context of the varied changes to the policy and regulatory framework for forest, forest health, and the protection of endangered species in Ontario

Substantive Concerns

The notice summary purports that the MNRF is “proposing changes to the Crown Forest Sustainability Act, 1994 to provide certainty for northern, rural and Indigenous communities, while ensuring the continued sustainable management of Ontario’s forests and conservation of the province’s biodiversity”. It then goes on to make a number of claims related to the good global reputation of Ontario’s forest management system is a foundation of the province’s forest sector, and the powers of the *Crown Forest Sustainability Act* (CFSA) to “provide for the sustainable management of Crown forests in a manner that must have regard for plant life, animal life, water, soil, air and social and economic values.” While referencing endangered species and species-at-risk in a very general manner, the posting reasonably makes no claim that

the Crown Forest Sustainability Act provides for the protection or recovery of endangered species.

At it's centre, the proposal is to “no longer require duplicative authorizations (sic) or a regulatory exemption under the ESA for forest operations conducted in Crown forests in accordance with an approved forest management plan under the CFSA” by simply removing the requirement to protect endangered species and their habitat or to plan for their recovery.

The proposal is unacceptable. By absenting the need for authorizations for activities undertaken as part of forest management, the proposal would rob endangered species of the protection that is legally required. Forestry operations that adversely affect endangered species and their habitat would be in contravention of the Endangered Species Act, but the regulatory tools would be absent.

The posting attempts a weak argument that the purpose is to reduce duplication, but in fact this proposed change would result in duplication, with one system in place for some activities (e.g. forestry operations) and a different system in place of other activities (e.g. a transmission line) even when the activities could be the same or similar in their physical carrying out and in their impact on endangered species and their habitat.

The posting suggests that this change would “provide more certainty to the forest industry and communities that benefit from it” but provides no information or analysis in support of that statement. Northwatch's analysis is different: that further weakening of the regulatory framework and greater disparities in application of basic environmental protections, such as for endangered species, creates an environment of regulatory and policy uncertainty which will be of disbenefit to the forest industry and any communities that benefit from consistent and ongoing operations of a forestry company.

While overall the posting contains little information or analysis, it nevertheless makes errors in fact. For example, it states that “the existing forest management framework requires consultation on species at risk-related considerations over a long-term planning horizon (e.g., ten-year forest management plan) and annually (e.g., in the development of annual work schedules). These consultation requirements related to operations that could affect species at risk would continue under the proposed new approach.”

In fact, there are no public consultation requirements related to the Annual Work Schedule. There is no comment or consultation opportunity associated with the preparation or MNRF approval of the Annual Work Schedule. Further, with the decision posting for ERO notice # 019-0732 with respect to “Amendments to Three Statutes administered by the Ministry of Natural Resources and Forestry to support the proposed Better for People, Smarter for Business Act, 2019 and a proposal for a new regulation under the Lakes and Rivers Improvement Act” the

Government of Ontario has removed the requirements for annual work schedules to be approved by the Ministry of Natural Resources.

In addition, the Long Term Management Directions (Stage Two) planning stage has already been completed – or at least the opportunity for public comment on the LTMD has closed – for all forest management plans in the northeast region (with the possible exception of the Pineland Forest, for which there is no posting on the Environmental Registry), thus removing any opportunity for public comment for at least several years (the next set of forest management plans for which LTMDs will be developed will be for the 2029-2030 plan period).

Given the above noted facts, there is in effect no “consultation” on the potential impacts of forestry operations on endangered species and their habitat until the development of the next set of plans and their related Long Term Management Directions, which are not expected to get underway prior to approximately 2026.

In addition to the above, Northwatch adopts the submissions of the Wildands League, Ontario Nature and the David Suzuki Foundation in which they strongly object to the permanent exemption of Ontario’s forest management activities from Ontario’s Endangered Species Act (ESA), and the information and analysis they provide in support of their objections.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brennain Lloyd', written in a cursive style.

Brennain Lloyd
Northwatch Project Coordinator

cc. Jerry DeMarco, Commissioner of the Environment