Citizens Environment Alliance

March 4, 2019

To: ESAReg@ontario.ca

Re: EBR 013-4143: 10th Year Review of Ontario's Endangered Species Act

Thank you for the opportunity to comment on the Endangered Species Act (ESA) review discussion paper. On behalf of the Citizens Environment Alliance of Southwestern Ontario, my comments are provided below. General comments about the discussion paper are followed by responses to the specific focus and questions of the discussion paper.

The overall direction of the options under consideration in the discussion paper is environmental deregulation to make it easier for industry and development proponents to proceed with activities that harm species at risk and their habitats.

There is a fundamental difference between revising the law and improving its implementation. To improve outcomes for species at risk, Ontario needs to improve ESA implementation not weaken the law.

The "activities" referred to throughout the paper are by-and-large harmful activities prohibited by the ESA (e.g., killing members of threatened or endangered species, damaging or destroying their habitat). Proponents can proceed with harmful activities only if they have an authorization (e.g., a permit which requires an overall benefit to be provided for the species) or an exemption (which should be an exception, not the rule).

Landscape Approaches

Landscape-level planning is already provided in the ESA through Sections 13 and 14, for example through multi-species recovery strategies. Therefore, no change to the law is needed. The law should not be changed to allow landscape approaches "instead of" species-specific approaches. The fine scale of species-specific status assessments, listings and protections is needed.

Listing Process and Protections

Science-based listing of species at risk by the Committee on the Status of Species at Risk in Ontario (COSSARO) (sec. 3 – 8) and automatic protection of listed species and their habitats (sec. 9, 10) are cornerstones of the ESA and must remain intact. There should be no change to the ESA regarding the listing process and the role of COSSARO. 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)).

Improving notification is an implementation issue which should be addressed through better communications. 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); there are years of notice embedded in this process, from the release of COSEWIC status reports to the listing by COSSARO.

There should be no alternative to automatic species and habitat protections (e.g., through ministerial discretion to remove or delay protections).

Recovery Policies and Habitat Regulations

There should be no change to the legal requirement to produce Government Response Statements (GRS) within nine months of the release of Recovery Strategies (sec. 11(8)). Failure to meet the legislated deadline is an implementation issue.

The required five-year reporting on progress is reasonable and ensures transparency and accountability. It provides an impetus for action, ensuring that effectiveness is assessed, and contributes to institutional learning and adaptive management.

The ESA already allows the Minister to delay the development of a habitat regulation (sec. 56 (1)b) or to not proceed with a habitat regulation (sec. 56 (1)c). No change to the law is needed.

There should be no changes to the legal provisions for habitat regulations, which describe specific boundaries or features of areas deemed to be habitat and provide enhanced certainty for ESA implementation and enforcement. They can include 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.

Authorization Processes

There are already sufficient 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 - an easy way out that reduces accountability and facilitates harm to species at risk and their habitats. Retain the current requirements to provide an on-the-ground, overall benefit to species harmed.

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. That would only make it easier for harmful activities to proceed, without public scrutiny, government oversight or enforcement.

The ESA (sec. 18) already provides a means to harmonize its requirements with other legislative or regulatory frameworks. No legislative change is needed. This is an implementation issue.

Conclusion

In southwestern Ontario there has been a staggering loss of habitat for species. Any changes to the ESA should focus on repealing the 2013 exemptions to forestry, hydro, mining and commercial development

industries. Additionally, section 57(1)1 should be amended so that any future exemptions cannot endanger the recovery of endangered and threatened species. If there is a pathway to recovery for species at risk then the priority of the ESA must be on protecting and recovering species at risk, exclusively.

Sincerely,

Derek Coronado

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