

March 1, 2013

The Honourable Kathleen Wynne  
Premier of Ontario  
Legislative Building  
Queens Park  
Toronto, Ontario  
M7A 1A1

Dear Premier Wynne,

We, the undersigned, are writing to express our deep concern about proposed exemptions to Ontario's *Endangered Species Act, 2007* (ESA) and to request that your government not proceed with these changes. The proposed exemptions would severely weaken the ESA's current standard of protection and undermine the government's ability to monitor and control activities that harm threatened and endangered species and their habitats.

The Liberal government passed the ESA in 2007 with overwhelming public support. Celebrated nationally and internationally by scientists and the environmental community as a gold standard in species at risk legislation, it greatly enhanced the government's credibility as a green leader. The ESA is intended to facilitate species recovery through mandatory protection for threatened and endangered species and their habitats. At the same time, however, it provides flexibility for economic development by allowing for permits that authorize otherwise prohibited activities, contingent upon the achievement of an overall benefit for the species.

The proposed exemptions would replace the permitting process for a broad suite of planned, approved and/or existing activities across multiple sectors including but not limited to forestry, aggregates, residential and commercial development, hydro, renewable energy, waste management and infrastructure development. The result would be a lower standard of protection for species at risk and a dramatic withdrawal of government oversight of harmful activities.

Currently the ESA requires a permit holder to satisfy conditions that will result in an overall improvement to the condition of the species affected, for example, by mitigating impacts or restoring habitat. The proposed exemptions would replace the overall benefit standard with a lesser requirement that is simply to minimize adverse effects. The difference between these two standards is explained in a Ministry of Natural Resources (MNR) policy document released last year:

Overall benefit is more than no net loss or an exchange of like-for-like. Overall benefit is grounded in the protection and recovery of the species at risk and must include **more than steps to minimize adverse effects** on the protected species or habitats. The outcome of the overall benefit actions is meant to **improve the relative standing of a species** after taking into account the residual adverse effects to the species or its habitat that are authorized by the permit. (*Endangered Species Act Submission Standards for Activity Review and 17(2) c Overall Benefit Permits*, February, 2012, p. 2. Bold emphasis added.)

Further, the current permitting system requires careful government review and approval of the proposed activities and of plans to achieve overall benefit for the species. Notice of permits is also provided to the public through the Environmental Registry. In contrast, government review or public notice would no longer be required through the proposed exemptions. Thus government and public oversight of activities harming species at risk and their habitat would be severely reduced.

We acknowledge that there have been many challenges in implementing the ESA. In addition to the costs to government of issuing permits, industry has also expressed concerns regarding inconsistency with respect to permitting, costly delays and poor coordination with other approval processes. Broad exemptions, however, are not the appropriate way to address these deficiencies. Instead, the government should aim to improve implementation, for example, through: standardizing permits where appropriate; moving to on-line permitting for low risk activities such as research; improving coordination of permitting with other approval processes; delegating approval authority to those with requisite expertise within MNR; investing in the development of strategic approaches to recovery; and implementing full cost recovery and user-pay models for permitting as per the 2012 Drummond Report (Recommendation 13-1). These and other options should be explored.

The ESA is a relatively new piece of legislation, and much of the frustration to date can be attributed to growing pains. For example, MNR's policy on permitting was released only in 2012, so it is not surprising that there has been lack of clarity and inconsistency in the permitting process across districts. Addressing such issues, however, does not necessitate weakening the Act. Rather, implementation needs to be improved.

In closing, we would like to thank you for your attention and trust that you will give our concerns due consideration.

Yours truly,

Caroline Schultz  
Executive Director  
Ontario Nature



Theresa McClenaghan  
Executive Director & Counsel  
Canadian Environmental Law  
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