



# WILDLANDS LEAGUE

*A chapter of the Canadian Parks and Wilderness Society*

January 17, 2020

**Via email: [cfsaspeciesatrisk@ontario.ca](mailto:cfsaspeciesatrisk@ontario.ca)**

Troy Anthony  
Crown Forests and Lands Policy Branch  
Ministry of Natural Resources and Forestry  
70 Foster Drive, Suite 400  
Sault Ste. Marie, ON  
P6A 6V5

**Re: Proposed changes to the *Crown Forest Sustainability Act, 1994* ([ERO number: 019-1020](#))  
with respect to reconciling protection and recovery of forest dependant at risk species with  
timber harvesting on public lands**

Dear Mr. Anthony,

Wildlands League is responding to the above noted proposal, which was posted to the Environmental Registry of Ontario (ERO) on Friday, December 20, 2019 and specified a minimum 30-day comment period. We appreciate your timely and responsive emails, which have provided us with additional context to the proposal. As a result, we now understand that the proposed resolution to a perceived duplication is premised on a misunderstanding of the broader legislative context. For reasons outlined below **Wildlands League strongly recommends that the Ministry of Natural Resources and Forestry immediately stop planning to amend the *Crown Forest Sustainability Act, 1994* and take more time to understand the legislative history** behind the effort to reconcile protection and recovery of forest dependant at risk species with timber harvesting on public lands. The proposed approach, which would solidify a commitment to only minimize harm to at risk, forest dependent species, runs contrary to the Ontario government's commitments to address biodiversity decline and take action on climate change.

In our submission, we also highlight our on-going concerns about how public consultation is being conducted under Ontario's *Environmental Bill of Rights, 1993*.

## About Wildlands League

Wildlands League is a leading conservation group representing approximately 30,000 supporters in Ontario. We've been working in the public interest since 1968, beginning with a campaign to protect Algonquin Park from development. We are a team of policy experts, strategists and communicators protecting Canada's natural world.

We have extensive knowledge and expertise of forestry and other land uses in Ontario and a history of working with governments (provincial, federal, Indigenous and municipal), communities, scientists, the public and resource industries on progressive conservation initiatives. An important example of this is our long-term work in the Cochrane area where we co-created a plan with industry, municipal and Indigenous leaders to protect the habitat of boreal caribou, ensure wood supply for mills and respect

Indigenous peoples<sup>1</sup>. Wildlands League has specific experience with impacts of industrial development on boreal forests and wildlife that depend on them, as well as dedicated protected areas establishment and management expertise. Throughout our 50+ year history we have provided expert policy advice to improve forestry in Ontario and to ensure Ontario meets its commitments around sustainability, biodiversity conservation, public consultation and respecting Indigenous rights.

#### Lack of meaningful consultation under Ontario's *Environmental Bill of Rights, 1993*

While Wildlands League has been impressed with the timely and responsive e-mail communications with you directly, we are deeply concerned with the overall approach to public consultation that we have been observing. As you are aware, Wildlands League requested an extension to the minimum 30-day comment period, based on the complexity of, public interest in, and need for additional time to provide an informed response. The request for an extension was denied without providing reasons that directly addressed our concerns. The intersection of forest operations and at risk species protection is a very complex issue, as demonstrated by the many years that the Ministry has grappled with this challenge and not yet come up with a viable solution. There may have been a mistaken observation of legislative duplication, when there is actually a very complex and important overarching resolution of two different legislative regimes with different purposes and intentions – one under the *Endangered Species Act, 2007* (ESA) and the other under the *Crown Forest Sustainability Act, 1994* (CFSA). We explain this context in further detail below.

Wildlands League is also frustrated by the pace of proposals that are fragmented and piecemeal, preventing the public's informed comments that will be considered by the Ministry prior to making a decision, as required by the *Environmental Bill of Rights, 1993*. On December 4, 2019, notice of the proposed "Ontario's Forest Sector Strategy (Draft)" ([ERO number: 019-0880](#)) was released for public comment. The deadline is February 4, 2020. Without waiting to receive all the public comments and making decisions related to what the Ministry of Natural Resources and Forestry (MNRF) hears, five additional proposals (including the above noted one) related to forestry have been posted.<sup>2</sup> The notice to which this submission relates, has a comment period that closes before the comment period for the draft strategy. Moving ahead with implementation of a strategy without waiting for and responding to comments on the strategy itself makes a mockery of the public consultation process. Ontario has

---

<sup>1</sup> You can learn more about it at <http://madeinthenorthcaribouplan.ca/>.

<sup>2</sup> In addition to Proposed changes to the *Crown Forest Sustainability Act, 1994* ([ERO number: 019-1020](#)), the four other forestry related ERO notices that were posted on December 20, 2019 are:

Proposed revisions to the Forest Manuals regulated under the Crown Forest Sustainability Act notice ([ERO number: 019-0715](#))

Proposed revisions to Ontario's Independent Forest Audit Regulation under the Crown Forest Sustainability Act notice ([ERO number: 019-1006](#))

Proposed amendments to General Regulation 334 under the Environmental Assessment Act to remove Regulatory Duplication of Forest Management requirements in Ontario notice ([ERO number: 019-0961](#))

Discussion paper: Developing strategic direction for managing forest pests in Ontario ([ERO number: 019-1005](#))



# WILDLANDS LEAGUE

*A chapter of the Canadian Parks and Wilderness Society*

already taken action on behalf of developers and the aggregates industry through omnibus “red tape reduction” bills, to make wide ranging changes to important environmental laws without meaningful public consultation as required by the EBR. Such changes have been strongly criticized as weakening environmental laws in favour of industry. We are concerned that legal protections are now being significantly weakened for forest reliant species at risk to favour forestry.

Finally, while we also requested that the deadlines for all 5 forestry related notices that were posted to the ERO on December 20, 2019 be aligned to allow the public time to consider them all as a package and attempt to understand how all the proposals fit into the draft Forest Sector Strategy, we are only able at this time to provide comments on the above noted proposal. Further, given the tight timeline (we only received your email response to our questions yesterday), Wildlands League reserves the right to provide additional information related to the above noted proposal as we continue to assess and respond to the rest of the forestry related ERO notices, including the draft Forest Sector Strategy, in the coming days and weeks.

## Reconciling protection and recovery of at risk species with timber harvesting on public lands

When the ESA first came into force in 2008, forestry operations authorized pursuant to the CFSA were exempted on a temporary basis in order allow time for determining how the dual mandates of at risk species protection and recovery and sustainably managing forest operations would be achieved (see Appendix for the original 1-year regulatory exemption provision). For more than a decade, Wildlands League has closely and carefully tracked Ontario’s progress on reconciling the legislative requirements for the ESA with those of the CFSA. We have participated in numerous public consultations and workshops hosted by the MNRF on this topic. We have seen too many starts and stops by the MNRF on this policy issue and have observed that discussions to date have resulted in a continued blanket exemption for the forest industry from meeting the core protection provisions of the ESA. We summarized our exasperation with this policy failure in March 2018 and it bears repeating here<sup>3</sup>:

*We are deeply disappointed that, after almost a decade since the Endangered Species Act, 2007 (ESA) came into force and forestry operations were first exempted from its application, there is still so little progress at determining how at risk species will be protected and restored within forestry operations. Wildlands League would prefer that forest operations become subject to the ESA and consideration be given to applying section 18 of the ESA to forestry operations in Ontario.*

*That the Ministry is consulting on another exemption after two 5-year time periods (2008-2013 and 2013-2018) is unacceptable and a shocking abdication of their responsibilities.*

*We cannot emphasize this enough: it is a deep and serious concern that the Ministry has had ten years and still can’t devise a rule set consistent with protecting and recovering species at risk*

---

<sup>3</sup> See our comments to ERO posting number 013-1669 available at <http://wildlandsleague.org/media/Wildlands-comments-on-exemption-extension-March-2018.pdf>.

*that overlap with and are affected by forestry operations. We must ask, is this deliberate or is the Ministry incapable or does the Ministry just refuse?*

The current ERO notice states that MNRF is:

*... proposing a long-term approach that would no longer require duplicative authorizations 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.*

The MNRF appears to have abandoned any effort to actually ensure that both legislative mandates are met. ESA authorizations are intended to meet a different objective than what is required by the CFSA. As we have stated on numerous occasions, forest operations have never been adjusted to ensure fulfillment of the ESA’s purpose. The significant legal reforms made to the ESA in 2007 were required because efforts to minimize harm to at risk species, across many land uses (including forest operations), had been unsuccessful. Within this proposal, it is clearly stated that “The CFSA forest management framework seeks to minimize adverse effects on ecological, economic and social values and conserve biodiversity, this includes minimizing adverse effects on species at risk.” Minimizing adverse effects is not equivalent to protection and recovery of at risk species. We know of at least 50 species at risk that overlap with forestry operations; it is the protection and recovery of those species that needs to be prioritized. The current situation, which the MNRF is proposing be made the permanent solution, only seeks to mitigate harm to at risk species, which is contrary to the purpose of the ESA. (See Table 1 comparing the ESA and CFSA, demonstrating the differences with the two legal regimes that have yet to be effectively reconciled.)

<b>Table 1: ESA and CFSA comparison</b>		
	<b>ESA</b>	<b>CFSA</b>
<b>Purpose</b>	1. The purposes of this Act are: 1. To identify species at risk based on the best available scientific information, including information obtained from community knowledge and aboriginal traditional knowledge. 2. To protect species that are at risk and their habitats, and to promote the recovery of species that are at risk. 3. To promote stewardship activities to assist in the protection and recovery of species that are at risk.	1 The purposes of this Act are to provide for the sustainability of Crown forests and, in accordance with that objective, to manage Crown forests to meet social, economic and environmental needs of present and future generations.
<b>Focus</b>	Protecting and recovering species at risk and their habitats	The sustainability of long term Crown forest health. To manage



# WILDLANDS LEAGUE

A chapter of the Canadian Parks and Wilderness Society

**Table 1: ESA and CFSA comparison**

	ESA	CFSA
	Based on needs of species	Crown forests to meet multiple needs: social, economic and environmental needs of present and future generations.
Standard of protection	Protect and recover, overall benefit, presumption of protection	Minimizes adverse effects, presumption of permission of forestry operations
Scale	Responds to needs of the species and habitat	Forest management unit
Priority	Prioritizes ecological (species and habitat) with flexibility mechanisms to allow harmful activities to go ahead with conditions	Balances economic, social and ecological
Tools	Recovery strategy, government response statement and/or action plan.	<i>Boreal Landscape guide.</i> The objective of the Landscape Guide is to direct forest management activities to maintain or enhance natural landscape structure, composition and patterns that provide for the long term health of forest ecosystems in an efficient and effective manner <sup>5</sup> . <i>Stand and Site Guide.</i>
Intended to prevent extirpation of species	Yes	Species can continue to decline under minimizing effects standard

While Wildlands League would welcome the end of the use of regulatory exemptions as we have been calling for this since it became the dominant (and inappropriate in our view) approach to authorizing industrial activities under the ESA in 2013, we strongly recommend that the MNRF immediately stop planning to amend the CFSA to solidify an ESA exemption.

**Rather, we strongly recommend that the MNRF take the time to understand the broader context and develop an approach that addresses the role that healthy forest ecosystems and improved biodiversity protections play in address the climate and extinction crises that we are facing.**

Biodiversity conservation is a key tenet of sustainably managing forest operations. It would be inconsistent with the latter to permanently exempt forestry operations from the ESA and would fundamentally undermine the province’s claims of sustainable forest management internationally and in

<sup>5</sup> See <https://www.ontario.ca/page/forest-management-boreal-landscapes>

the marketplace. It’s also a curious proposal given the intention of Ontario to expand markets for its wood products to “to meet current and future environmentally-conscious consumer choices<sup>7</sup>”. Environmentally-conscious consumers are not going to want products sourced from controversial areas and at the expense of at risk species.

In the specific case of boreal caribou, a species with high public interest, the Ontario government has so far failed to provide protections consistent with its own ESA and the federal *Species at Risk Act*. Instead, it is attempting to rely on the approach to caribou under the Boreal Landscape Guide which is forestry operations focused and fails to include range condition and cumulative disturbance, as well as protection of critical habitat. Further, the Boreal Landscape Guide does not address permanent disturbances like roads and other linear infrastructure. (See Table 2 comparing requirements for boreal caribou under the ESA and the CFSA.)

<b>Table 2: Demonstrating the differences between the two legal regimes for boreal caribou needs</b>		
	<b>ESA and related policies</b>	<b>CFSA and related policies</b>
Protection of Caribou Critical Habitat	Yes	No
Range Condition Addressed	Yes	No
Cumulative Disturbance Monitoring	Yes	No
Cumulative Disturbance Threshold	Yes	No
Preparation of a Range Plan	Yes	No
Planning at the Range Scale	Yes	No
Needs of the species	Yes	No

<sup>7</sup> See p. 10 <https://prod-environmental-registry.s3.amazonaws.com/2019-12/MNRF-Final-Draft-Ontario%27s-FSSV9.3.pdf>



# WILDLANDS LEAGUE

*A chapter of the Canadian Parks and Wilderness Society*

The federal government, through two published progress reports on unprotected critical habitat for boreal caribou, has advised that Ontario's legal regime is not fully consistent with the legal provisions of SARA and has gaps<sup>8</sup>. These reports are also consistent with independent findings from [Ecojustice in 2018](#) and Wildlands League's [own legal research](#) from 2017. The federal government has a role to play when provinces and territories fail to protect critical habitat and can step in using tools under its *Species at Risk Act*.

It is long past time that the MNRF finalize a solution that serves to both protect and recover at risk species and ensure sustainably managed forest operations. Wildlands League continues to be ready and willing to assist in implementing such a solution.

Sincerely,

Anna Baggio  
Director, Conservation Planning

Cc: Assistant Auditor General, Commissioner of the Environment, Jerry De Marco  
(Jerry.DeMarco@auditor.on.ca)

---

<sup>8</sup> See <https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/critical-habitat-reports/woodland-caribou-boreal-population-2018.html> and <https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/critical-habitat-reports/woodland-caribou-boreal-population-protected-2019.html>

Appendix – Original exemption from ESA protections ([O Reg 242/08, as filed June 27, 2008](#))

**Transition — forest operations in Crown forests**

**24.** (1) With respect to any species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species, clause 9 (1) (a) and subsection 10 (1) of the Act do not apply to a person who conducts forest operations under the authority of a forest resource licence granted under the *Crown Forest Sustainability Act, 1994*, if,

(a) the applicable forest management plan includes an operational prescription for an area of concern that specifically applies to the species and the forest operations are conducted in accordance with the prescription;

(b) the applicable forest management plan does not include an operational prescription for an area of concern that specifically applies to the species, but the plan includes a management objective that specifically applies to the habitat of the species and the forest operations are conducted in accordance with provisions of the plan that specifically apply to that habitat; or

(c) the applicable forest management plan does not include an operational prescription for an area of concern that specifically applies to the species or a management objective that specifically applies to the habitat of the species, but the forest operations are conducted in accordance with an operational prescription for an area of concern that specifically applies to the species and that is not included in the plan, and the holder of the licence has asked the Minister to amend the plan to include the prescription.

(2) This section is revoked on June 30, 2009.