

Beresford Law

Professional Corporation

November 24, 2020

Standing Committee on Finance and Economic Affairs
99 Wellesley Street West
Room 1405, Whitney Block
Queen's Park
Toronto, Ontario M7A 1A2

Attn: Amarjot Sandu, MPP, Chair: amarjot.sandu@pc.ola.org
Julia Douglas, Clerk: comms-financeaffairs@ola.org

Re: Ontario's Bill 229, Schedule 6 – Proposed Amendments to the Conservation Authorities Act

I am writing to you today to vocalize my concerns regarding Schedule 6 of Bill 229, the proposed Protect, Support, and Recover from COVID-19 Act (Budget Measures), 2020 ("Bill 229").¹

As you are aware, Schedule 6 of Bill 229, proposes fundamental changes to the *Conservation Authorities Act* and to the conservation authorities' role in land use planning. These changes require fulsome engagement and consultation, not only with Ontarians but also with Indigenous peoples, as is required by Ontario's duty to consult and as set out in Ontario's *Environmental Bill of Rights, 1993*.

By including Schedule 6 into Bill 229, a budget bill, Ontario is disturbingly circumventing necessary and required public and indigenous consultation. This alarming trend of using omnibus budget measures bills to make substantive changes to environmental laws, and thereby, sidestepping the public's right to be consulted, must be discontinued.

The majority of the Schedule 6 amendments are regressive in nature. They are inconsistent with Indigenous peoples' sacred and natural laws, as well as international law conventions, such as the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"). I have concerns of how Schedule 6 will impact Aboriginal and Treaty rights, as are protected by section 35 of the *Constitution Act, 1982*, as well as Ontario's duty to consult and accommodate with Indigenous peoples as it relates to decisions or actions that may adversely impact Indigenous peoples' asserted or established rights.

¹ Please also see attached, a letter of concern submitted by the Canadian Environmental Law Association, with outlined references and supports, as further support to my noted letter of concern.

The importance of water and environmental spaces to the public and Indigenous peoples today is especially demonstrated during this time of COVID-19, whereby people are out in record numbers, visiting their local conservation area, and spending time outdoors. I walk my dogs at my local conservation area – Tiffin Conversation Area – once, if not twice a day; and have done so over the last few years. I can say without question, that since COVID-19 began, Tiffin has been busier than ever. Water and nature is the source of all life and it is important to protect our water from misuse. Without clean water, we will all perish.

I recognize the importance of economic recovery, especially during these times. But we, as a society, and you as a representative of the government of Ontario **cannot** prioritize economic recovery at the expense of the environment. The changes outlined in Schedule 6 are solely for the benefit of proponents/the business sector and not for Ontarians at large; and certainly not for the environment. It is **not** the job of the government to simplify legislation so as to make it easier on proponents who prioritize making money over protecting Ontarians and the environment. It is the role of the government – it is your responsibility.

In these times of disruption and climate change, Ontario should be setting precedents for protecting the environment and not operating as it did so many years ago. The proposed changes in Schedule 6 of Bill 229 are a veiled attempt by Ontario to sneak significant regulatory changes through the pretext of COVID-19 recovery strategies. This Schedule will inherently impact Ontarians and Indigenous peoples for generations to come; setting back watershed planning and implementation of an ecosystem-based approach by decades.

Ontario must not enact Schedule 6 in its present form, and instead should withdraw it in its entirety from Bill 229. Furthermore, I highly recommend that Ontario ensure that the current mandate of the province's 36 conservation authorities is maintained and enhanced, in order to effectively protect, restore, and manage the watersheds where 95 percent of the people of Ontario reside.

In safeguarding our watersheds and our environment, Ontario will ensure that it is moving forward in a climate resilient way. By engaging in meaningful consultations with the public and Indigenous peoples, the province will be better informed in completing watershed planning and in undertaking its on-going climate change impact assessment. The time is now to step away from the traditional mindset of the Conservative party and make a positive name for Ontario as it relates to water, the environment, and climate change, generally.

Yours truly,



Caitlin Beresford
Owner, Beresford Law Professional Corporation

Attachment

CELA-Bill-229-Schedules-6-and-8-Submission-to-Standing-Committee-Nov-2020-1

cc:

Honourable Doug Ford, Premier, premier@ontario.ca;

James Wallace, Chief of Staff to the Premier, James.Wallace@ontario.ca;

Honourable Jeff Yurek, Minister, Environment, Conservation and Parks,
minister.mecp@ontario.ca;

Honourable John Yakabuski, Minister, Natural Resources and Forestry,
minister.mnrf@ontario.ca;

Honourable Steve Clark, Minister, Municipal Affairs and Housing, minister.mah@ontario.ca;

Honourable Rod Philips, Minister, Finance, minister.fin@ontario.ca;

Caroline Schultz, Executive Director, Ontario Nature, info@ontarionature.org; and

Tim Gray, Executive Director, Environmental Defence, info@environmentaldefence.ca.

November 27, 2020

VIA email

Standing Committee on Finance and Economic Affairs
99 Wellesley Street West
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Queen's Park
Toronto, ON
M7A 1A2

Attn: Amarjot Sandhu, MPP, Chair: amarjot.sandhu@pc.ola.org
Julia Douglas, Clerk: comm-financeaffairs@ola.org

CC: Hon. Rod Phillips, Minister of Finance: rod.phillipsco@pc.ola.org
Hon. Doug Ford, Premier of Ontario: doug.fordco@pc.ola.org

Re: Bill 229, Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020

On behalf of the Canadian Environmental Law Association (CELA), please find for the assistance of the Standing Committee our recommendation, as discussed below, that:

Schedule 6 (proposed changes to the Conservation Authorities Act and consequential amendments) and Schedule 8 (proposed changes to the Crown Forest Sustainability Act, 1994) both be withdrawn in their entirety from Bill 229.

About Canadian Environmental Law Association

CELA is a non-profit, public interest organization established in 1970 for the purpose of using and improving existing laws to protect public health and the environment. For nearly 50 years, CELA has used legal tools, undertaken ground-breaking research, and conducted public interest advocacy to increase environmental protection and safeguard communities. CELA works towards protecting human health and the environment by actively engaging in policy analysis and seeking justice for those harmed by pollution or poor environmental decision-making. It is from this public interest perspective that we have reviewed Schedules 6 and 8 in Bill 229.

Canadian Environmental Law Association

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Lack of Robust, Meaningful Public Consultations

On November 5, 2020, the Ontario government tabled omnibus budget measures Bill 229 (the proposed Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020) for First Reading in the Ontario Legislature.¹ Schedule 6 of Bill 229 proposes fundamental changes to the *Conservation Authorities Act*² (CAAct) and to the conservation authorities' role in land use planning. Schedule 8 of Bill 229 proposes a permanent exemption for authorized logging operations from prohibitions against killing species at risk and destroying their habitats. An Environmental Registry of Ontario (ERO) bulletin titled Updating the Conservation Authorities Act³ (ERO # 019-2646) was also posted on November 5, 2020, stating that public consultation is not required under Ontario's *Environmental Bill of Rights, 1993*⁴ (EBR) because the proposed amendments form part of a budget. The most recent ERO bulletin relating to the intersection of forest operations and species at risk protections titled Proposed amendment to a regulation under the Endangered Species Act, 2007 relating to forest operations in Crown forests⁵ (ERO # 019-1995) was posted on June 29, 2020 and relies on the temporary halt to EBR rights earlier this year⁶ as the reason for not requiring consultation and hence not officially providing a decision notice. In the ERO bulletin, responses to the continued exemption from ESA prohibitions for forest operations that "were approved for publishing are available in the Bulletin supporting materials section." At time of writing, no such supporting materials were available (see attached). As such, the public cannot view the noted responses: 75 received through the registry and 3981 received by email. There does not appear to be any ERO notices at all related to the proposal to permanently exempt forest operations from species at risk protection and recovery obligations.

¹ See <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-229>.

² See <https://www.ontario.ca/laws/statute/90c27>.

³ See <https://ero.ontario.ca/notice/019-2646>.

⁴ See <https://www.ontario.ca/laws/statute/93e28>. Section 33 of the EBR states:

33 (1) A minister need not give notice under section 15, 16 or 22 of a proposal that would, if implemented, form part of or give effect to a budget or economic statement presented to the Assembly.

(2) A minister need not give notice under section 15, 16 or 22 of a proposal that would, if implemented, change, (a) a policy that forms part of a budget or economic statement presented to the Assembly; or (b) a bill, Act, regulation or instrument that gives effect to a budget or economic statement presented to the Assembly.

⁵ See <https://ero.ontario.ca/notice/019-1995>.

⁶ The Auditor General found: "In April 2020, the Environment Ministry used a regulation to suspend the operation of the public consultation requirements of the EBR Act to allow the government to act quickly to address issues arising from the COVID-19 emergency. The regulation exempted all proposals from the EBR Act public consultation requirements, even if they were not related to COVID-19. As a result of this broad exemption, members of the public lost their right to seek leave to appeal ministries' decisions on 197 environmentally significant permits and approvals that were proposed during the ten week exemption period—permits and approvals that, for example, would allow industrial facilities to discharge pollutants to the air and water in Ontario communities—and that were unrelated to COVID-19." Office of the Auditor General of Ontario, Annual Report, *Operation of the Environmental Bill of Rights (2020)*, Chapter 1, November 2020. See <https://www.auditor.on.ca/en/content/annualreports/arbyyear/ar2020.html>.

Bill 229 is the most recent proposal in a disturbing and undemocratic trend, starting with Bill 55, Strong Action for Ontario Act (Budget Measures), 2012⁷, of using omnibus budget measures bills to make substantive changes to environmental laws and thereby sidestepping the public's EBR rights.

CELA has on-going concerns regarding the lack of opportunity for meaningful public input, absence of appropriate engagement with Indigenous communities, and expedited legislative process. Proceeding with significant legislative amendments affecting forests, species, waters, and lands should not occur when many First Nation communities are unable to consult directly with their members due to the ongoing COVID-19 pandemic.

Further, relying on an exemption for budget measures implementation when proposed amendments to environmental laws are likely to have significant ecological and social impacts is inconsistent with the public participation rights guaranteed in the EBR. By not providing the opportunity for public review and comment via the ERO, which imposes a duty on the appropriate ministries to take every reasonable step to ensure all comments received in relation to a proposal are considered when decisions are made⁸, the government has both denied the public their rights and also deprived themselves from hearing from Indigenous communities and the public regarding their values and interests affected by Schedules 6 and 8. The Auditor General of Ontario's recent compliance report echoed this concern about improper sidestepping of key consultation requirements in the EBR.⁹

Remove Schedule 6, proposed changes to the *Conservation Authorities Act* and consequential amendments

CELA's overall conclusion is that while a small number of the proposed changes (including improved transparency through publicly available information) may be supportable in principle, the majority of the Schedule 6 amendments are regressive in nature and are completely contradictory to fulfilling both the purpose of the *Conservation Authorities Act* and the desire to set the course for more climate resilient communities in the future. Accordingly, CELA recommends that Schedule 6 not be enacted in its present form and instead be withdrawn in its entirety from Bill 229.

Over the past five decades, CELA has been involved in various law reform initiatives, court cases, public hearings and other administrative proceedings related to the importance of integrated watershed management and ensuring hydrological integrity in land use planning on behalf of low-income individuals and disadvantaged or vulnerable communities. In particular,

⁷ See <https://www.ola.org/en/legislative-business/bills/parliament-40/session-1/bill-55>.

⁸ *Environmental Bill of Rights, 1993*, s 35

⁹ Office of the Auditor General of Ontario, Annual Report, *Operation of the Environmental Bill of Rights (2020)*, Chapter 1, November 2020. See <https://www.auditor.on.ca/en/content/annualreports/arbyyear/ar2020.html>.

CELA was counsel representing citizens of Walkerton at the associated drinking water inquiry and has been a persistent voice in seeking drinking water source protections for all residents of Ontario¹⁰. Further, Justice O'Connor endorsed watershed-based management of surface water and groundwater in his Part Two Report¹¹. Conservation authorities have played a crucial role in the first phase of implementation¹² of the *Clean Water Act, 2006*¹³. Having arms-length agencies, whose jurisdiction is on a watershed-basis, has been key to enabling drinking water source protections.

Ontario's Special Advisor on Flooding Doug McNeil noted:

Ontario has a long history of taking actions to keep people and property safe from the impacts of flooding through land use planning policies and mitigative activities. The development of the modern floodplain policy in Ontario, the watershed approach, the conservation authority model, and the flood standards have been extremely effective at reducing flood risks, especially in new greenfield development areas.¹⁴

While the purpose of the CAAct is to "provide for the organization and delivery of programs and services that further the conservation, restoration, development and management of natural resources in watersheds in Ontario"¹⁵, the scope and powers of conservation authorities will be limited to the point that no meaningful integrated watershed management will be possible. The "watershed approach" and the "conservation authority model" that the Special Advisor on Flooding lauded will be stripped down and made unrecognizable. Building climate resilient communities for the future will be impeded, if not impossible. Outlined below is a non-exhaustive list of concerns.

1. Indigenous people and Indigenous knowledge will not be represented in membership of conservation authorities

Although it is proposed that a non-derogation clause¹⁶ will be added to the CAAct, such a confirmation of the constitutional protections afforded to existing aboriginal and treaty rights

¹⁰ See <https://cela.ca/review-clean-water-act/>.

¹¹ The Honourable Dennis R. O'Connor, Part Two Report of the Walkerton Inquiry: A Strategy for Safe Drinking Water (2002), Chapter 4, pp 103-107; report available for download online http://www.archives.gov.on.ca/en/e_records/walkerton/report2/index.html.

¹² See <https://conservationontario.ca/conservation-authorities/source-water-protection>.

¹³ See <https://www.ontario.ca/laws/statute/06c22>.

¹⁴ See Executive Summary, Ontario's Special Advisor on Flooding Report to Government, An Independent Review of the 2019 Flood Events in Ontario, A Report to the Hon. John Yakabuski, Minister of Natural Resources and Forestry (October 2019), <https://www.ontario.ca/document/independent-review-2019-flood-events-ontario>.

¹⁵ CAAct, section 0.1.

¹⁶ Bill 229, Schedule 6, section 1, proposes to add the following provision:

1.1 For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for the existing aboriginal and treaty rights of the aboriginal peoples of Canada as recognized and affirmed in section 35 of the *Constitution Act, 1982*.

in and of itself will not be sufficient to bring Indigenous rights into consideration by conservation authorities. For example, the membership of conservation authorities is not expanded to include the ability to appoint Indigenous representation. The governance model for conservation authorities does not appear to have been adjusted at all to incorporate Indigenous ways of knowing.

2. Narrowing of duties of conservation authorities' members is counter to the watershed approach needed to build climate resilient communities for the future

The duty of members will not include acting to "further the objects" of a conservation authority and the duty of members who are municipal councilors will be to act on behalf of their respective municipality. Conservation authorities were established to have a watershed-based approach and oversight precisely because municipal boundaries and interests do not align completely with ecologically relevant (e.g. watershed) boundaries.

3. Narrowing the objects and powers of conservation authorities is counter to the watershed approach needed to build climate resilient communities for the future

The current Provincial Policy Statement (PPS) contains policies aimed at protecting, improving and restoring water quality and quantity, including emphasizing "using the watershed as the ecologically meaningful scale for integrated and long-term planning, which can be a foundation for considering cumulative impacts of development"¹⁷ and aimed at ensuring "the diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems" as important recognition of the "linkages between and among natural heritage features and areas, surface water features and ground water features."¹⁸ The proposed amendments will narrow the objects of conservation authorities such that ensuring land use planning decisions are consistent with the PPS and achieving the overall purpose of the CAAct will be significantly impeded.

Further, conservation authorities' powers to study & investigate, enter land throughout the watershed, cause research to be done, and expropriate will be narrowed or removed, making the ability to use a watershed approach next to impossible.

4. Removing conservation authorities' status as independent public bodies in land use planning will set integrated watershed management back decades

Bringing conservation authorities under the "one window" approach to municipal land use planning will limit meaningful integrated watershed management. Under the *Planning Act*, all

¹⁷ Provincial Policy Statement (2020), policy 2.2.1(a). See <https://www.ontario.ca/page/provincial-policy-statement-2020>.

¹⁸ PPS (2020), policy 2.1.2.

provincial interests are expressed and defended only through the Ministry of Municipal Affairs and Housing (MMAH). As there is no express mechanism to ensure the interests of other ministry's mandates, including (as proposed) the watershed approach of conservation authorities, are reflected in MMAH's implementation of the *Planning Act*, the desire to build climate resilient communities for the future is very unlikely to be fully realized.

5. New procedures are being introduced without indication of whether matching third party rights of appeal in the public interest will be provided

New procedural rights for requestors (for fee reconsideration) and applicants (for the yet to be proclaimed permits), including new rights to appeal to the LPAT, are proposed. Further, new processes for the Minister to review, as well as appoint investigators and recommend the appointment of administrators, are also proposed. These amendments do not indicate, one way or another, whether third party, public interest based, appeal rights (as exist under the EBR for certain "instruments") will be made available.

6. Much of the detail, particularly in relation to setting out the scope of programs and services, any standards and requirements, and other important matters, continue to be left to the development of future regulations

It is impossible to fully analyze the impact of the proposed changes to conservation authorities' roles and responsibilities, as so many details are left to the discretion of the Lieutenant Governor in Council and/or the Minister to make future regulations.

Building climate resilience is crucially important for Ontario. For the reasons discussed above, CELA believes that the proposed changes to conservation authorities will not achieve this important task. To the contrary, the package of amendments as proposed are likely to set back watershed planning and implementation of an ecosystem-based approach by decades.

Remove Schedule 8, proposed changes to the *Crown Forest Sustainability Act, 1994*

CELA opposes the entirety of Schedule 8 and calls for its withdrawal from Bill 229.

The *Crown Forest Sustainability Act, 1994* (CFSA) applies to approximately two thirds of Ontario's land base, which is home to numerous species at risk and their habitat. It is precisely because of the Act's application to the majority of Ontario that makes the rollbacks proposed in Schedule 8 so significant and objectionable from the public interest perspective. If enacted, Schedule 8 will oust the protection for endangered species, contained in the *Endangered Species Act, 2007* and not replicated in the CFSA, from most of the Ontario landscape.

While Schedule 8 introduces a definition of “species at risk,” (ie. species that are listed as extirpated, endangered or threatened on the Species at Risk List in Ontario) into the CFSA, it does so in order to exempt all forestry operations from mandatory consideration of species at risk protection and recovery mandated by the *Endangered Species Act, 2007* (ESA).¹⁹ That is, Schedule 8 proposes a new exemption within the CFSA which if enacted, removes the ESA’s prohibitions - that no person shall kill, harm, or harass²⁰ a listed species nor damage or destroy its habitat necessary for their survival and recovery²¹ - from forestry operations, when on Crown land, as part of a forest management plan or forest resource licence.

More alarmingly, Schedule 8 proposes to remove the ability of the Minister to issue orders in circumstances when there is imminent danger to an at-risk species.²² Specifically, under the ESA, the Minister is able to order that a person stop engaging in an activity that could or is having a “significant adverse effect” on a species at risk.²³ However, by virtue of the proposed Schedule 8 amendment, this power has been nullified.

Further, while Schedule 8 introduces a new regulation making power enabling the Minister of Natural Resources and Forestry to order forestry operations to refrain or take certain actions to minimize impacts on at-risk species,²⁴ the passage of such a regulation remains at the discretion of the Lieutenant Governor in Council. Notably, the scope of the regulatory power and its aim to ‘avoid or minimize harm’ to species at risk is also much narrower than the ESA’s purpose to ‘protect and promote recovery.’ In short, a could-be regulation is not a stand in for the ESA and its detailed oversight and enforcement mechanisms aimed expressly at protecting at-risk species and enabling their recovery.

Read in conjunction with the province’s commitment to double logging in public forests²⁵ and permanently exempt forestry from environmental assessment,²⁶ Schedule 8 unravels what few legal mechanisms remained that prioritize conservation and protect natural areas in response to the biodiversity crisis. As set out in the Auditor General’s 2020 Annual Report, this is precisely the issue which ought to garner the government’s urgent and utmost attention:

¹⁹ Bill 229, Schedule 8, proposed amendment to CFSA, provision 47.1

²⁰ ESA, sections 9 and 10

²¹ ESA, section 1

²² Bill 229, Schedule 8, proposed amendment to CFSA, provision 47.1(3)

²³ ESA, Section 27.1

²⁴ Bill 229, Schedule 8, proposed amendment to CFSA, section 69(1)

²⁵ Ontario has committed “to unleash the full potential of this important industry,” see online; <https://www.ontario.ca/page/ontarios-forest-sector-strategy>

²⁶ See ERO decision notice “Proposed amendments to General Regulation 334 under the Environmental Assessment Act to remove Regulatory Duplication of Forest Management requirements in Ontario” (June 30, 2020), <https://ero.ontario.ca/notice/019-0961>; see also CELA’s blog, “Exemption of forestry from the Environmental Assessment Act sets a bad precedent,” (13 July 2020) online: <https://cela.ca/exemption-of-forestry-from-the-environmental-assessment-act-sets-a-bad-precedent/>

Biodiversity loss has been ranked as a top-five risk—by likelihood and impact—to economies over the next decade. Unlike other provinces, Ontario does not have a long-term plan or target to expand its network of protected areas.²⁷

Conclusion

In making our recommendations, we further refer the Standing Committee to our detailed comments previously provided on recent proposals related to conservation authorities, forest operations, and species at risk, including:

- Proposed Amendments to the Conservation Authorities Act – Preliminary Analysis (Nov 2020)²⁸
- We Need Our Conservation Authorities – Survey & Primer Report (Sep 2020)²⁹
- Letter to the Premier in Support of Ontario’s Conservation Authorities (Apr 2020)³⁰
- Conservation Authorities Modernization ERO Numbers: 013-5018 (including Schedule 2, Bill 108) and 013-4992 (May 2019)³¹
- Submission on proposed amendment to a regulation under the Endangered Species Act, 2007, relating to forest operations (Jun 2020)³²
- Submission on Bill 132, Schedule 16 regarding the proposed amendments to the CFSA (Nov 2019)³³
- Submission on Bill 108, Schedule 5 regarding proposed amendments to the ESA (May 2019)³⁴,
- Submission on the 10th Year Review of Ontario’s Endangered Species Act Discussion paper (Feb 2019)³⁵

For the reasons discussed above, CELA strongly recommends that Schedule 6 (proposed changes to the Conservation Authorities Act and consequential amendments) and Schedule 8

²⁷ Office of the Auditor General, “2020 Annual Report of Environmental Value-for-Money Audits and the Operation of the Environmental Bill of Rights,” online:

https://www.auditor.on.ca/en/content/annualreports/arreports/en20/ENV_reflections_en20.pdf, pg 2

²⁸ See <https://cela.ca/proposed-amendments-to-the-conservation-authorities-act-preliminary-analysis/>.

²⁹ See <https://cela.ca/we-need-our-conservation-authorities/>.

³⁰ See <https://cela.ca/letterofsupportforconservationauthorities/>.

³¹ See <https://cela.ca/conservation-authorities-modernization-ero-numbers-013-5018-including-schedule-2-bill-108-and-013-4992/>.

³² See <https://cela.ca/forestry-exemption-endangered/>.

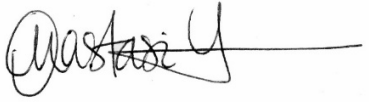
³³ See <https://cela.ca/submissions-on-bill-132/>.

³⁴ See <https://cela.ca/submission-regarding-legislative-amendments-to-the-endangered-species-act-bill-108-schedule-5-environmental-registry-no-013-5033/>.

³⁵ See <https://cela.ca/10th-year-review-of-ontarios-endangered-species-act/>.

(proposed changes to the Crown Forest Sustainability Act, 1994) be withdrawn in their entirety from Bill 229.

Regards,
CANADIAN ENVIRONMENTAL LAW ASSOCIATION

A handwritten signature in black ink, appearing to read 'Anastasia', followed by a long horizontal line.

Anastasia M Lintner, PhD, LLB
Special Projects Counsel, Healthy Great Lakes

A handwritten signature in black ink, appearing to read 'Kerrie Blaise'.

Kerrie Blaise
Northern Services Counsel



Environmental Registry of Ontario

Proposed amendment to a regulation under the Endangered Species Act, 2007 relating to forest operations in Crown forests

ERO (Environmental Registry of Ontario) number	019-1995
Notice type	Bulletin
Act	Endangered Species Act , R.S.O. 2007
Posted by	Ministry of the Environment, Conservation and Parks
Bulletin posted	June 29, 2020
Last updated	June 29, 2020

This notice is for informational purposes only. There is no requirement to consult on this initiative on the Environmental Registry of Ontario. Learn more about the [types of notices](#) ([/page/glossary#section-4](#)) on the registry.

Bulletin summary

Ontario has extended the temporary approach for forest operations conducted in Crown forests under the *Endangered Species Act* for an additional year. This will help avoid additional regulatory burden and economic strain on the forestry sector while a long-term approach is being considered.

Why consultation isn't required

On April 1, 2020, the Ontario Government made a temporary regulation to respond to the COVID-19 (2019 Novel Coronavirus) outbreak. *Ontario Regulation 115/20* exempts all proposals for policies, acts, regulations and instruments from posting requirements under the EBR (Environmental Bill of Rights).

Ontario Regulation 115/20 was revoked on June 15, 2020, however we are posting this decision as a bulletin because the proposal was posted on May 19, 2020 while *Ontario Regulation 115/20* was in effect.

Although consultation was not required, the ministry did consult with the public on this proposal by posting [ERO \(Environmental Registry of Ontario\) # \(number\) 019-1620](#) (<https://ero.ontario.ca/notice/019-1620>) for public comment from May 19 - June 18, 2020. To ensure transparency, the ministry is providing details of its decision and the effects of consultation on decision-making in this notice.

Bulletin details

Decision details

A decision was made to proceed with the proposal, and the Regulation was filed June 29, 2020.

The proposal was implemented by an amendment to *Ontario Regulation 242/08* (General) by *Ontario Regulation 238/20*. This regulation was filed by the Registrar of Regulations on June 29, 2020 and will be published in the Ontario Gazette.

Temporary regulatory approach for forest operations in managed Crown forests

There has been a temporary regulatory approach for forest operations in Crown forests under the *Endangered Species Act* since 2013. This time-limited approach for managing species at risk under s. 22.1 of *O.Reg. (Ontario Regulation) 242/08* of the *Endangered Species Act* ensures that forest operations meet the standards of protection they currently have under their forest management plans. *O.Reg. (Ontario Regulation) 242/08* exempts forest operations in Crown forests from the prohibitions in s. 9(1)(a) and s.10(1) of the *Endangered Species Act* if the following conditions (among other conditions) in the regulation are met:

- operating under an approved license under the *Crown Forest Sustainability Act, 1994*
- following an approved forest management plan

The current temporary approach has been extended for an additional year until June 30, 2021.

Comments received

- 75 received through the registry
- 3981 received by email

Comments that were approved for publishing are available in the Bulletin supporting materials section.

Effects of consultation

The Ministry of the Environment, Conservation and Parks heard from a wide range of individuals and organizations including municipalities, forest industry, environmental non-government organizations, a non-government organization, an Indigenous community, and members of the public. The ministry considered all comments received during the proposal period. The following is a summary of the main comments received relating to the regulation amendment and the ministry's response to those comments.

1. The one-year extension to the forestry regulation does not provide sufficient protection for species at risk.

Response: Ontario is committed to protecting species at risk and improving environmental outcomes by modernizing and improving the effectiveness of the *Endangered Species Act, 2007* (ESA) as committed to in our Made-in-Ontario Environment Plan.

Since 2013, the Ontario government has had in place a temporary approach for forestry operations under the *ESA* (*Endangered Species Act*), to reduce duplication, given that species at risk are addressed through the forest management framework

prescribed by the *Crown Forest Sustainability Act* (CFSA). The CFSA (Crown Forest Sustainability Act) provides for the sustainable management of Crown forests while regarding plant and animal life, water, soil, air and social and economic values.

The ESA (Endangered Species Act) continues to apply to all other activities in Crown forests.

2. CFSA (Crown Forest Sustainability Act) protections are not equivalent to protections under the ESA (Endangered Species Act), and forestry practices have resulted in habitat loss and population decline of boreal caribou.

Response: The CFSA (Crown Forest Sustainability Act) provides for the sustainable management of Crown forests while regarding plant and animal life, including species at risk, water, soil, air and social and economic values.

The CFSA (Crown Forest Sustainability Act) has comprehensive tools and mechanisms in place under its forest planning framework to maintain oversight and protection of the environment in forest management planning activities. This includes the Forest Management Planning Manual and forest management guides.

3. The one-year extension is a good short-term measure; however a long term permanent solution is required.

Response: In December 2019, the Ministry of Natural Resources and Forestry proposed a long-term approach to authorize forest operations solely under the CFSA (Crown Forest Sustainability Act) through the ESA (Endangered Species Act). This approach would consider species at risk while creating certainty for the forest sector, supporting economic development and job creation in the northern and rural communities that depend on this sector.

Following a 30-day public consultation period on the Environmental Registry, Ontario has extended the temporary approach for forestry operations under the ESA (Endangered Species Act), for an additional year.

This will maintain the current requirements and provide additional time for the consideration of a long-term approach for forest operations.

Supporting materials

Related links

[Ontario's Endangered Species Act, 2007 \(https://www.ontario.ca/laws/statute/07e06\)](https://www.ontario.ca/laws/statute/07e06)

[Ontario Regulation 242/08 \(https://www.ontario.ca/laws/regulation/080242\)](https://www.ontario.ca/laws/regulation/080242)

[Species at Risk in Ontario \(https://www.ontario.ca/page/species-risk-ontario\)](https://www.ontario.ca/page/species-risk-ontario)

[Forest Management Planning in Ontario \(https://www.ontario.ca/page/forest-management-planning\)](https://www.ontario.ca/page/forest-management-planning)

[Ontario's Draft Forest Sector Strategy \(https://ero.ontario.ca/notice/019-0880\)](https://ero.ontario.ca/notice/019-0880)

Related ERO (Environmental Registry of Ontario) notices

[Proposed amendment to a regulation under the Endangered Species Act, 2007 relating to forest operations in Crown forests \(/notice/019-1620\)](#)

[Proposed changes to the Crown Forest Sustainability Act, 1994 \(/notice/019-1020\)](#)

View materials in person

Important notice: Due to the ongoing COVID-19 pandemic, viewing supporting materials in person is not available at this time.

Please reach out to the Contact listed in this notice to see if alternate arrangements can be made.

Connect with us

Contact

Fiona McGuiness

 [705-755-5647](tel:705-755-5647)