



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

April 18, 2007

BY FAX

Ms. Debbie Ramsay
Species at Risk Legislative Review
Room 5540, Whitney Block
99 Wellesley Street West
Toronto, Ontario
M7A 1W3

Dear Ms. Ramsay:

**RE: PROPOSED *ENDANGERED SPECIES ACT, 2007* (BILL 184)
EBR REGISTRY NOTICE NO. AB06E6001**

We are writing to provide the comments of the Canadian Environmental Law Association (CELA) with respect to Bill 184, the proposed *Endangered Species Act, 2007* (“ESA”). These comments are being provided to you in accordance with the above-noted EBR Registry Notice.

At the outset, we commend the Ministry of Natural Resources for moving ahead with the long overdue reform of Ontario’s existing (and antiquated) endangered species legislation. We have carefully reviewed the proposed ESA (as passed by the Legislature after First Reading), and our overall conclusion is the Bill generally confers fair, effective and enforceable protection of species at risk and their habitat in Ontario.

We are particularly pleased by the following components of the proposed ESA:

- public interest preamble affirming the importance of biodiversity conservation;
- broad statement of legislative purpose to identify and protect species at risk and their habitat;
- credible, science-based listing procedures;
- comprehensive “strict liability” prohibitions (and appropriate penalties) against harming species and their habitat;
- standard inspection, investigation and enforcement provisions;
- mandatory recovery planning requirements;
- statutory basis for stewardship programs regarding private lands;
- meaningful opportunities for public involvement; and

- clear timelines and reporting requirements to enhance transparency and governmental accountability.

At the same time, our review of the proposed ESA has identified some opportunities to strengthen and improve the Act by amending certain provisions of Bill 184. In this regard, we have considered the recent submission to you from the Save Our Species coalition, and we fully agree with and adopt the coalition's suggested amendments in relation to the following matters:

- ensuring that future species-specific regulations are consistent with relevant recovery strategies, and that such regulations should protect not only "residences" but all types of habitat required for the species' breeding, feeding and other life cycle needs;
- prescribing the minimum content requirements for recovery strategies and management plans, and imposing a mandatory duty upon the Minister to actually implement and update (not just "respond to") recovery strategies and management plans;
- constraining exemptions (whether established by regulation, permit or agreement) to ensure that species' survival is not jeopardized by such exemptions, and providing for meaningful public and COSSARO input on proposed exemptions;
- expanding the legislative purposes of the ESA to include other related environmental principles and approaches (i.e. precautionary principle, ecosystem approach, intergenerational equity, etc.);
- ensuring that the ESA is prescribed as a statute to which the *Environmental Bill of Rights* fully applies; and
- expediting the phase-in timeline for proclaiming into force and implementing the ESA.

In addition, CELA is unaware of whether – or to what extent – representatives of Ontario's First Nations and aboriginal communities have been involved in the drafting of the ESA, or whether such representatives are content with the aboriginal agreement provisions in section 19 or the non-derogation clause in section 45 of the ESA. Given the Crown's clear duty to consult and accommodate First Nations and aboriginal communities (especially where ESA permits, agreements, and other instruments may have potential to impact the exercise of treaty or aboriginal rights), CELA hereby defers to the views and perspectives which may be expressed by First Nations or aboriginal representatives in relation to such matters.

Subject to the foregoing comments and caveats, please be advised that CELA strongly supports the proposed ESA. Accordingly, CELA urges the Ontario Legislature to amend and enact the Bill, and to proclaim it into force, as expeditiously as possible. In this regard, we caution the Ontario Legislature against repeating the painfully slow evolution of the federal *Species at Risk Act*, which was introduced, allowed to die on the order paper due to election calls, and re-drafted and re-introduced several times before it was finally enacted by Parliament.

In closing, CELA calls upon the Ontario Legislature to give Second and Third Reading, and Royal Assent, to the proposed ESA before the end of the current legislative session. In our view, time is of the essence for the purposes of protecting species on the brink of extinction, and we therefore urge the timely passage of the ESA without undue delay.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Richard D. Lindgren
Counsel

cc. The Hon. Dalton McGuinty, Premier of Ontario
The Hon. David Ramsay, Minister of Natural Resources
John Tory, Progressive Conservative Leader
Howard Hampton, New Democratic Party Leader
Robert Wright, Sierra Legal

CELA Publication #572