



WITHOUT A TRACE?

Reflecting on the 10th anniversary
of Ontario's Endangered Species
Act, 2007

ecojustice



DAVID SUZUKI
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Ontario's Endangered Species Act, 2007

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Barn Owl, Photo by Jim Chambers

2007: A NEW PROMISE FOR ONTARIO'S IMPERILLED SPECIES

In the early 2000s, there was wide recognition that Ontario's original Endangered Species Act, passed in 1971, wasn't working to protect the province's species at risk. Scientists had identified 128 threatened and endangered species in Ontario, and yet only 42 were listed for protection under the law.¹ Those without any legal protection included American badger, barn owl, Blanding's turtle and dozens more (as well as 46 species listed as special concern).

Ontario's new Endangered Species Act 2007 (ESA) represented a significant improvement. It mandated a science-based approach to listing species protected under the law, required the timely preparation of recovery strategies and automatically protected the habitat of endangered and threatened species. It also offered flexibility to landowners and development proponents, allowing them, under certain conditions, to apply for permits for activities that might harm an at-risk species or its habitat. The new ESA was passed with all-party support, and was widely heralded by environmental organizations as the gold standard in species at risk legislation in Canada.²

Nevertheless, even in the earliest days of the new ESA, there were signs that the ministry responsible for its implementation — the Ministry of Natural Resources (since renamed the Ministry of Natural Resources and Forestry)— was headed down the road of troubling concessions. When the law came into force in 2008, the ministry exempted through regulation various development, infrastructure, pits and quarry and hydro projects. It also granted to the forestry industry a special one-year exemption from the rules against harm to species and their habitats.³

¹ Ontario Nature. Legal Protection for Ontario's Reptiles and Amphibians.

Available at: www.ontarionature.org/protect/species/legal_protection_for_reptiles_and_amphibians.php.

² Middlestat, M. March 21, 2007. Ontario to set 'gold standard' for species at risk. The Globe and Mail.

Available at: <https://www.theglobeandmail.com/news/national/ontario-to-set-gold-standard-for-species-at-risk/article20394950/>.

³ Environmental Commissioner of Ontario. 2009. The Last Line of Defence: A Review of Ontario's New Protections for Species at Risk, pp. 38-42.

2013: THE PROMISE ABANDONED

The ESA contained numerous provisions to facilitate the transition to the new responsibilities by extending timelines for application of protections and prohibitions. For example, for the 38 endangered species and 48 threatened species that were scientifically listed but not legally protected under the old law, the habitat protection provisions would not apply until 2013.

As the 2013 deadline for protecting the transition species approached, the ministry fell behind in its preparations for the so-called “transition species” and in meeting other legislative requirements under the ESA. In an apparent effort to side-step its obligations, it sought avoidance through proposed legislative amendments in 2012, including exempting certain activities from the law’s prohibitions against harming species and their habitat, weakening requirements to compensate for harmful activities and removing the legislated deadlines for completing recovery strategies. Strong public opposition to the proposed amendments convinced the legislature’s appointed standing committee, tasked with reviewing the amendments, not to let them go forward.

Undeterred, the ministry immediately sought an alternative route to a similar end through regulatory amendments. These amendments, approved by cabinet in 2013, exempt a broad suite of industrial and development activities from the rules against harming endangered and threatened species and their habitats. They run contrary to the very purpose of the ESA, which is to recover species at risk.

The regulatory exemptions fundamentally change the way the ministry addresses harm to species at risk. Circumventing the permitting process, which requires government assessment and approval of harmful activities, the exemptions allow activities to proceed without government review or approval, as long as development proponents register online and meet the conditions set out in regulation. There is no requirement, unlike permits, to provide an overall benefit to the species harmed and thus promote its recovery. Even though those operating under exemptions must prepare mitigation plans, they are not required, in most cases, to submit these plans to the MNRF, unless requested. The public, in turn, has no access to information about the activities taking place and no opportunity to understand the breadth or depth of their impacts.

Commenting on the regulatory exemptions in a special 2013 report titled *The Last Line of Defence: A Review of Ontario’s New Protections for Species at Risk*, the Environmental Commissioner of Ontario (ECO) concluded:

With these new exemptions, MNR is excessively exploiting the flexibility tools within the ESA, and nullifying much of the promise held by the new Act. [...] The ECO believes that MNR’s new approach to protecting species at risk is inconsistent with the Ontario Legislature’s drafting of the ESA.⁴

As of October 11, 2017, there have been 2,065 registrations for exemptions under the ESA.⁵ Approximately 15 per cent of these are for research and conservation projects intended ultimately to benefit species at risk.⁶ But for others — the vast majority of harmful activities are proceeding without government oversight or public scrutiny. Without adequate oversight, at-risk plants, animals and their habitats could disappear without a trace.

FROM PROTECTION TO MITIGATION, TRANSPARENCY TO IMPUNITY

Ten years after the new ESA was passed in Ontario, the standard of recovering species at risk in the province has been, for the most part, discarded, and replaced with a lower standard of minimizing harmful impacts. Further, a curtain has been drawn, shielding harmful activities from public scrutiny. This lack of transparency minimizes the public accountability of the ministry responsible for managing the habitat of species at risk to promote their recovery.

⁴ Environmental Commissioner of Ontario. 2013.

Laying Siege to the Last Line of Defence: A Review of Ontario’s Weakened Protections for Species at Risk, p. 8.

⁵ Ministry of Natural Resources and Forestry, personal communication, October 12, 2017.

⁶ Ibid.

PURPOSE OF THIS REPORT

This report aims to shed light on the shortfalls in species protection under the ministry's current approach to implementing the ESA and to expose the potentially fatal gap between the promise in 2007 and the current state of affairs a decade later. This report is situated within the context of the global biodiversity crisis. It discusses the standard and level of protection that the ESA provides and features of some of the many species affected.

THE BIODIVERSITY CRISIS: OUR BACKYARD AND BEYOND

When Ontario passed the original Endangered Species Act in 1971, it was the first province in Canada to do so, responding to a dawning global recognition of the biodiversity crisis and the need to address the harmful impacts of habitat degradation and loss, invasive species, pollution and illegal trade in wildlife populations around the world. Ontario was well ahead of the commitments made under the Convention on Biological Diversity in 1992 to establish legislation that provides effective protection for species at risk.⁷

Yet, despite its leadership, the numbers of species at risk have continued to rise in Ontario and very few have recovered sufficiently to be delisted. There are currently over 200 species at risk in the province, assessed as either endangered, threatened, special concern or extirpated (locally extinct):

- 40 birds (including the barn swallow, eastern whip-poor-will and Canada warbler)
- 14 mammals (including the eastern mole, wolverine and beluga whale)
- 46 fish and mussels (including American eel, lilliput and spotted gar)
- eight turtles (including wood turtle, spotted turtle and Blanding's turtle)
- eight amphibians (including Jefferson's salamander, northern cricket frog and Fowler's toad)
- 15 reptiles (including common five-lined skink, Massasauga rattlesnake and eastern foxsnake)
- 22 insects (including Hine's emerald dragonfly, gypsy cuckoo bumblebee and monarch butterfly)
- 80 plants (including American ginseng, American chestnut and four-leaved milkweed).⁸

The primary cause of species' decline in the province is the same as around the world: habitat loss and degradation. This is compounded by invasive species, climate change, pollution, disease and over-exploitation.⁹

Species depend upon functioning, resilient ecosystems to survive and flourish. At the same time, the loss or decline of a species can affect the whole web of life of which it is a part. Recent science shows that species loss has an impact on the very landscapes in which the species lives.¹⁰ In turn, it can affect human communities within those landscapes. Functioning, resilient ecosystems provide numerous and irreplaceable benefits, such as air and water purification, soil stabilization, flood prevention and climate change mitigation and opportunities for adaptation. These are vital to the well-being of all living things, including human beings.¹¹

⁷ Government of Canada, Species at Risk Public Registry. National Accord for the Protection of Species at Risk. Available at: <https://www.registrelep-sararegistry.gc.ca/6B319869-9388-44D1-A8A4-33A2F01CEFI0/Accord-eng.pdf>.

⁸ Ministry of Natural Resources and Forestry. Species at risk in Ontario. Available at: <https://www.ontario.ca/environment-and-energy/species-risk-ontario-list>.

⁹ WWF. 2016. Living Planet Report 2016. Risk and resilience in a new era. WWF International, Gland, Switzerland. http://wwf.panda.org/about_our_earth/all_publications/lpr_2016/.

¹⁰ Soule, M. E., et al. 2005. Strongly interacting species: conservation policy, management and ethics. *Bioscience*. Vol 55 Issue 2, pp. 168-176, and Sala, Enric. 2006. Top predators provide insurance against climate change. *Trends in Ecology and Evolution*. Vol 21 Issue 9, pp. 479-480.

¹¹ Anielski, M. and S. Wilson. 2005. Counting Canada's Natural Capital. Assessing the real value of Canada's boreal ecosystems. Canadian Boreal Initiative and Pembina Institute. http://www.pembina.org/reports/Boreal_FINAL.pdf.

¹² Ceballos, G. et al. 2017. Biological annihilation via the ongoing sixth mass extinction signaled by vertebrate population losses and declines. *Proceedings of the National Academy of Sciences*. Vol 114 no. 30.

¹³ Ibid.

¹⁴ WWF. 2016. Living Planet Report 2016. Risk and resilience in a new era. WWF International, Gland, Switzerland. http://wwf.panda.org/about_our_earth/all_publications/lpr_2016/.

¹⁵ Ceballos, G. et al. 2017. Biological annihilation via the ongoing sixth mass extinction signaled by vertebrate population losses and declines. *Proceedings of the National Academy of Sciences*. Vol 114 no. 30

THE SIXTH EXTINCTION

The 1970s saw the birth of the environmental movement, responding to new scientific evidence of worldwide declines in wildlife and to the growing recognition that humans were the driver of these declines, inspired in no small part by Rachel Carson's breakthrough exposé *Silent Spring*.

Sadly, across most of the planet, even where species legislation exists, the tug of war between biodiversity protection and the pursuit of ever-expanding profit margins has been overwhelmingly one-sided in favour of unsustainable resource extraction and development.

The sixth mass species extinction is underway, and its true extent has likely been underestimated.¹² Beyond extinctions, we are also experiencing an episode of catastrophic population declines of not only rare species but common ones as well.¹³ Habitat loss, overexploitation, pollution and climate change are just a few of the human-induced factors driving this mass extinction.

A 2016 report released by the World Wildlife Fund indicates that wildlife populations have declined by 58 per cent since 1970 and are likely to reach 67 per cent by the end of the decade.¹⁴ Another recent study¹⁵ analyzed the global population trends for 27,600 vertebrates (half of known vertebrate species) and found that nearly a third were in decline. A specific look at 177 well-studied mammals showed that since 1900, all had lost 30 per cent or more of their geographic ranges, and 40 per cent had experienced severe population declines.



THE ESA AS IT WAS INTENDED: PROTECTION WITH FLEXIBILITY

In most instances, for a species at risk to recover, its habitat (the area that it relies on directly or indirectly to carry out its life processes) must be maintained where it is still functioning, and restored where it has been degraded or destroyed. Accordingly, the ESA prohibits activities that damage or destroy the habitat of threatened or endangered species.

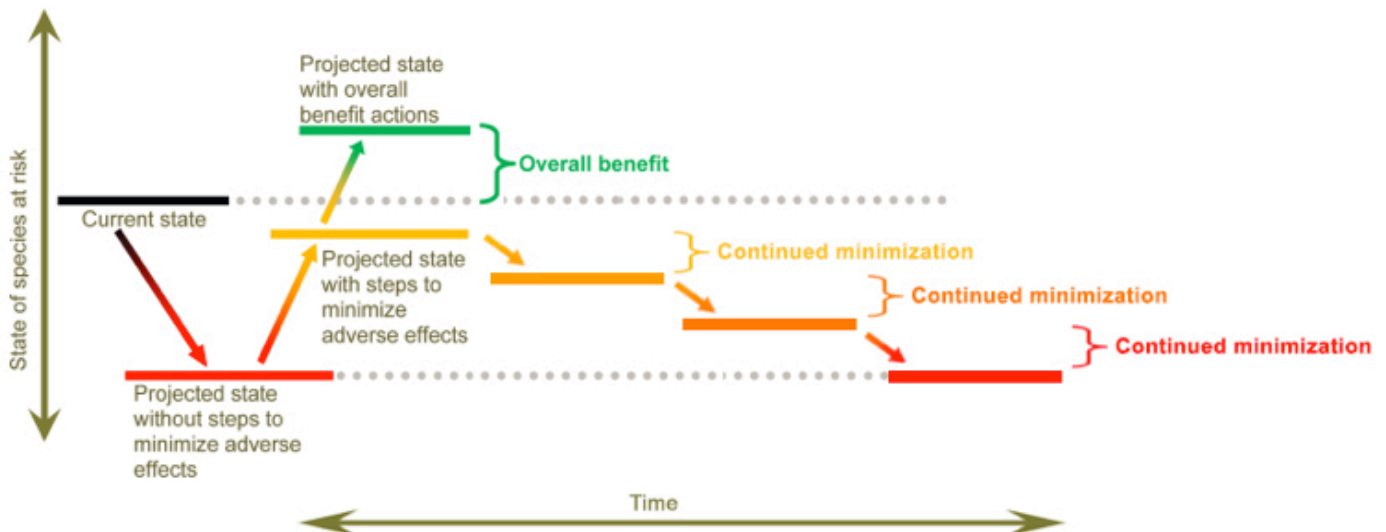
Nevertheless, through permits, development proponents are able to contravene this basic rule as long as they are able to provide an overall benefit for the species; that is, they must take measures to ensure that the species is better off in the end. (See Figure 1)

The ESA also provides for regulatory exemptions, another flexibility tool, whereby the minister can relieve a development proponent from having to adhere to the rules protecting species and their habitats. Recognizing the loophole created through the exemption provision, the ECO cautioned against its overuse in a special report in 2009:

While the limited use of exceptions may be warranted, they should not be used to undermine the greater purpose of the law: the protection and recovery of species at risk.¹⁶

The ECO has significant concerns about the dangerous potential for abuse of the government's power to create exemptions by regulation. The overall effectiveness of the new legislation could be seriously undermined if the government does not exercise significant restraint and caution in using its discretion to exempt harmful activities.¹⁷

Figure 1: Overall benefit compared to minimizing adverse effects



Schematic of overall benefit standard and minimization of adverse effects over time

Adapted from an Ministry of Natural Resources and Forestry schematic¹⁸

¹⁶ Environmental Commissioner of Ontario. 2009. The Last Line of Defence: A Review of Ontario's New Protections for Species at Risk, p. 34.

¹⁷ Ibid, p. 38.

¹⁸ Ministry of Natural Resources. 2012. Endangered Species Act Submission Standards for Activity Review and 17(2)(c) Overall Benefit Permits. Available at: http://files.ontario.ca/environment-and-energy/species-at-risk/stdprod_093115.pdf

Piping Plover
Photo by Brendan Toews



FLEXIBILITY WITHOUT RESTRAINT: THE 2013 EXEMPTIONS

Ignoring the environmental commissioner's advice, cabinet approved a broad suite of exemptions in 2013, applying to activities associated with forestry operations, hydroelectric generating stations, aggregate pits and quarries, drainage, early exploration mining, wind facilities and more. These exemptions allow operations to proceed, despite harm to species at risk and their habitat, with far less stringent requirements than meeting the test of overall benefit. In its place, the much weaker standard of minimizing harmful impacts applies.

Further, as a development proponent needs only to register for an exemption to proceed, the ministry has no authority under the ESA to say no to any project. In essence, the ministry gave up this authority when it put the exemptions in place. At best it can review whether the development proponent has met the requirements to minimize harm after the fact.

The environmental commissioner commented on the disturbing implications of the 2013 exemptions in a special report later that year:

With the regulatory amendments that came into force in July 2013, MNR has been widely accused of undermining its own legislation. The prohibitions on harming and harassing species at risk and damaging or destroying their habitat form the backbone of the ESA. The sweeping nature of the newly created exemptions from those prohibitions significantly water down the practical value of the legislation to the detriment of at-risk species. In effect, the ESA's prohibitions will no longer apply to a large number of activities that contributed to species becoming imperiled in the first place.¹⁹

In 2017, the ECO summarized the myriad ways that the ministry is still not protecting species at risk, including having never denied an ESA permit to any applicant.²⁰ She concluded, "the MNRF has utterly failed to implement the law effectively."²¹

Government is sacrificing species at risk "for the convenience of industry," according to the ECO:

- **Species are getting less protection under permit-by-rule, which covers many of the most common activities that adversely affect species at risk**
- **Through permit-by-rule, the overall benefit safeguard has been abandoned for almost all species at risk and many of the major activities that harm them**
- **There has been a dramatic increase in authorizations of harmful activities**
- **There is no tracking of cumulative impact**
- **There is no routine compliance monitoring**
- **There are no inspection targets or protocols**
- **There is no tracking of compliance and enforcement information**
- **There are no plans to evaluate effectiveness**
- **There is no public access to information**
- **The public is being "kept in the dark"²²**

The ECO also noted the disproportionate number of both species at risk and authorizations for activities harmful to species at risk in southern Ontario, as illustrated in Figure 2, from the report.

¹⁹ Environmental Commissioner of Ontario. 2013. Laying Siege to the Last Line of Defence: A Review of Ontario's Weakened Protections for Species at Risk.

²⁰ Environmental Commissioner of Ontario. 2017. Good Choices, Bad Choices. Environmental Rights and Environmental Protection in Ontario, p. 221.

²¹ Ibid, p. 248.

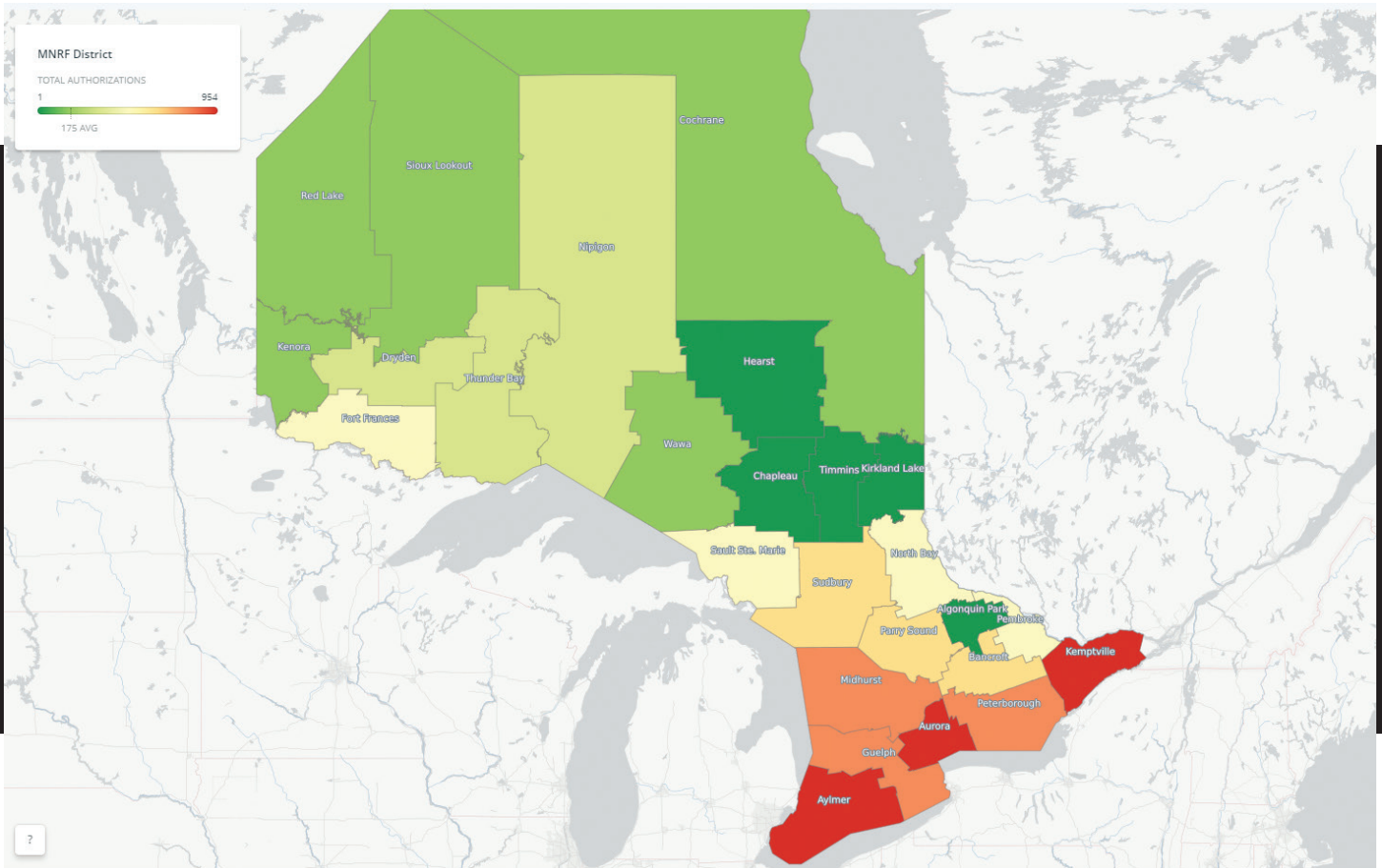
²² Ibid, pp. 3, 223, 227, 234-236, 238-241.

²³ Ibid, p. 231.

Eastern Meadowlark
Photo by John Sutton



Figure 2: Geographic distribution of ESA authorizations.²³





**AT RISK:
BOREAL
CARIBOU**

**CLASSIFIED AS
THREATENED:
1999**

Ontario's boreal caribou depend upon forests largely undisturbed by industrial activity and natural disturbances. As logging, roads, and other large-scale development moved northward in Ontario, the range of caribou in the province receded by 50 per cent.²⁴ Now, most populations in the Province are declining.²⁵ Boreal caribou are assessed as threatened with extinction, nationally and provincially.

The federal government, tasked with overseeing boreal caribou recovery under the federal Species at Risk Act (SARA), convened North America's leading caribou scientists to conduct a meta-analysis of caribou population trends in relation to range-level disturbances. Using these data, the scientists were able to determine a threshold of range-level disturbance beyond which boreal caribou were less than 60 percent likely to survive. The results of this analysis form the basis of the 2012 federal recovery strategy which sets a benchmark for the provinces: the maintenance of disturbance levels in every caribou range at 35 per cent or lower.²⁶

If boreal woodland caribou are to survive and recover, their current habitat must be maintained and restored to provide sufficient space for mating, rearing young and avoiding predators. Yet the ministry has allowed industrial expansion into caribou habitat to continue for the past 10 years, despite evidence of population decline, and in some ranges, high-risk levels of cumulative disturbance. With the current regulatory exemption for forestry set to expire on June 30, 2018, MNRF is exploring options to "harmonize" the ESA requirements with the existing laws and policy that inform forest management. There is some concern that the ministry may simply extend the exemption, which the forestry industry requested in its budget submission in 2017.²⁷

Figure 3: Caribou Range Disturbance Levels 2015: Close to or exceeding the 35 per cent maximum disturbance threshold

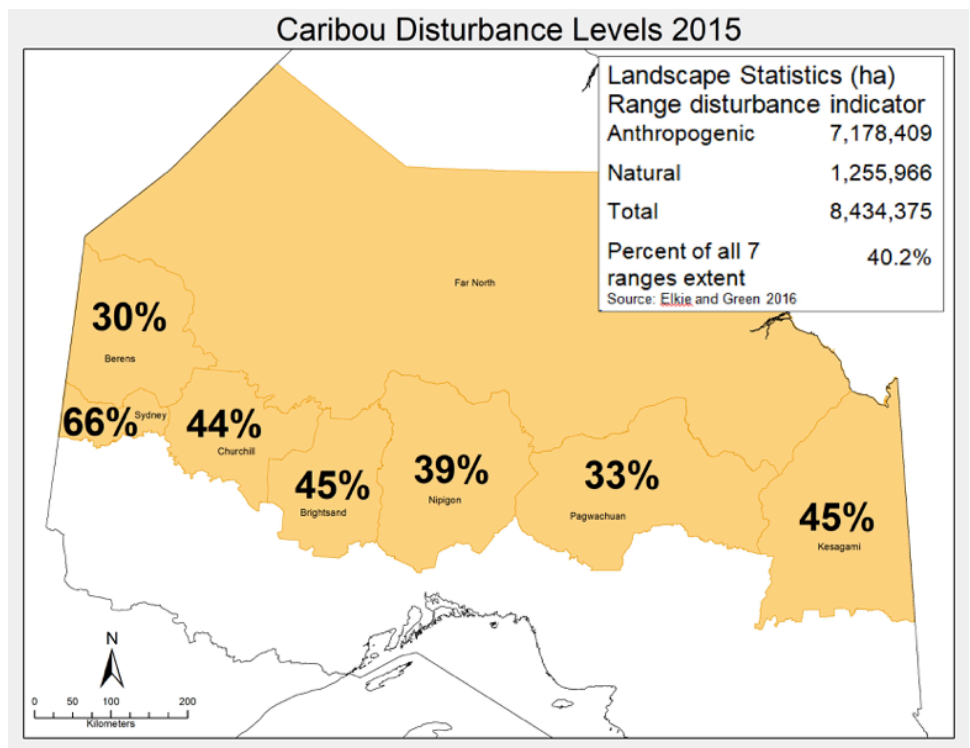


Photo by Bubba 55

²⁴ Hummel, Monte, and Justina C. Ray. 2008. *Caribou and the North: a shared future*. Toronto: Dundurn Press.

²⁵ Environment and Climate Change Canada. 2017. Report on the Progress of Recovery Strategy Implementation for the Woodland Caribou (*Rangifer tarandus caribou*), Boreal population in Canada for the period 2012-2017, Species at Risk Act, Recovery Strategy Series.

²⁶ Environment Canada. 2012. Recovery Strategy for the Woodland Caribou (*Rangifer tarandus caribou*), Boreal population, in Canada, Species at Risk Act Recovery Strategy Series.

²⁷ Ontario Forest Industries Association. 2018 Pre-Budget Submission. Working to Make Ontario's Forest Sector Stronger: A Provincial Strategy. Available at: <http://www.ofia.com/images/OFA%202018%20Pre-Budget%20Submission.pdf>.

The American eel is a migratory fish with an important role in Canada's aquatic biodiversity and a fascinating life history. With the greatest range of any fish species in North America, it starts life in the Sargasso Sea in the North Atlantic Ocean, spends most of its life in freshwater habitats from Greenland to South America, and, at maturity, returns to the Sargasso Sea to spawn.²⁸ Ontario houses the most critical portion of the Canadian population within Lake Ontario, the St. Lawrence River and its tributaries.²⁹

**AT RISK:
AMERICAN EEL**

**STATUS:
ENDANGERED**

**LISTED:
JUNE 30, 2008**

The American eel has supported major Indigenous, commercial and recreational fisheries, and once made up half of all biomass in Lake Ontario.³⁰ However, it has suffered a rapid decline (up to 95 per cent for many populations), and in Ontario is at only about three per cent of its mid-1980s abundance.³¹ As a result, fishing for the eel is no longer allowed in Ontario.³²

Primary threats to the American eel are habitat loss and degradation, including restricted access to feeding and spawning areas due to hydroelectric dams and other in-water barriers, as well as pollution and water level fluctuations.³³ Hydroelectric turbines also kill eels that try to pass through during downstream migration.³⁴ Although a few select dams have ladders to allow eels to safely pass and to help migration upstream, most dams in Ontario are without.³⁵

Hydroelectric generating stations are exempt from the ESA prohibitions against harming a species or its habitat. Operators of hydroelectric generating stations are required instead to enter into agreements with the minister that, if complied with, would prevent the station's operation from jeopardizing the survival or recovery of extirpated, endangered or threatened species. Operators have the option of opting out of this requirement, however, and instead must prepare a "mitigation plan," which may or may not be subject to review by provincial authorities. Failing to comply with an agreement or a mitigation plan cannot be prosecuted as an offence under the ESA.

Photo by Chesapeake Bay Program



RECOVERY STRATEGY DELAYS

Recovery strategies for endangered and threatened species present science-based recommendations on approaches to their protection and recovery. They are intended to play an integral role in implementation of the ESA, and under this law must be prepared according to strict, legally binding deadlines: within one year of a species being listed as endangered, and within two years of a species being listed as threatened. Again, the ESA provides some flexibility. The minister can choose to extend these deadlines in limited circumstances. But even brief delays in initiating recovery actions can result in further imperilment of species at risk.³⁶

As of June 13, 2017, recovery strategies were overdue for more than 40 species. **In most of these cases, the MNR was three or more years late in meeting the legislated deadline. For some species, the recovery strategies were more than seven years overdue.**

MNR's failure to produce recovery strategies for dozens of at-risk species according to the deadlines set out in the law points to systemic mismanagement. Multi-year delays significantly compromise the ability to achieve the ESA's goal of protecting and recovering Ontario's species at risk.



Photo by Joe Crowley

DELAYED RECOVERY STRATEGY: SPINY SOFTSHELL TURTLE

The Committee on the Status of Endangered Wildlife in Canada first listed this turtle as threatened in 1991. Since then it has suffered population declines of up to 50 per cent in Ontario and now numbers only about 800 to 1,000 individuals in the province.³⁷ Primary threats include habitat loss and degradation (due to shoreline development, riverbank stabilization, dams, etc.), poaching and recreational activity (collisions with motorboats, fishing by-catch).

Steep decline, multiple threats. Yet, for the spiny softshell and other species for which recovery strategies are overdue, the MNR asserts: "The delay in the preparation of these recovery strategies will not jeopardize the survival of these species in Ontario."³⁸ It is almost impossible to see how this could be true, as recovery strategies set out and prioritize actions needed to reverse species' declines.³⁹

²⁸ Ministry of Natural Resources and Forestry. American eel. Available at: <https://www.ontario.ca/page/american-eel>.

²⁹ MacGregor, R. et al. 2013. Recovery Strategy for the American Eel (*Anguilla rostrata*) in Ontario. Ontario Recovery Strategy Series. Prepared for Ontario Ministry of Natural Resources, Peterborough, Ontario, p. 25.

³⁰ Lake Ontario Waterkeeper. Bringing Back the American Eel. Available at: <http://www.waterkeeper.ca/case-american-eel/>.

³¹ COSEWIC. 2012. COSEWIC assessment and status report on the American Eel *Anguilla rostrata* in Canada. Committee on the Status of Endangered Wildlife in Canada, p. 35.

³² MacGregor, R. et al. 2013. Recovery Strategy for the American Eel (*Anguilla rostrata*) in Ontario. Ontario Recovery Strategy Series. Prepared for Ontario Ministry of Natural Resources, Peterborough, Ontario, p. 49

³³ Ministry of Natural Resources and Forestry. American eel. Available at: <https://www.ontario.ca/page/american-eel>.

³⁴ Ibid.

³⁵ CBC. May 23, 2011. Experts hope to save eels from Ontario hydro dams.

Available at: <http://www.cbc.ca/news/canada/ottawa/experts-hope-to-save-eels-from-ontario-hydro-dams-1.1068327>.

³⁶ Environmental Commissioner of Ontario. 2009. The Last Line of Defence: A Review of Ontario's New Protections for Species at Risk.

³⁷ Committee on the Status of Species at Risk in Ontario (COSSARO). 2016. Ontario Species at Risk Evaluation Report for Spiny Softshell (*Apalone spinifer*). Available at: https://files.ontario.ca/accessible_final_cossaroevaluation_spinysoftshell_dec2016.pdf.

³⁸ Environmental Registry. June 14, 2016. Additional time required to prepare recovery strategies for 33 species under the Endangered Species Act, 2007.

Available at: <https://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTI4Nzlx&statusId=MTk0NiY4&language=en>.

³⁹ Ontario Nature. October 11, 2016. Blog: Betrayed! (again) Ontario unravels protections for species at risk.

Available at: <https://www.ontarionature.org/connect/blog/betrayed-again-ontario-unravels-protections-for-species-at-risk/>.



Photo by Kerry Wixted

**AT RISK:
AMERICAN GINSENG**

**LISTED AS ENDANGERED UNDER THE ESA:
JUNE 30, 2008**

**RECOVERY STRATEGY DUE:
JUNE 30, 2013**

**RECOVERY STRATEGY OVERDUE:
MORE THAN FOUR YEARS**

The American ginseng, listed as endangered by Committee on the Status of Endangered Wildlife in Canada (COSEWIC) in 1988, was one of the 86 transition species for which protections under the ESA, including the recovery strategy, were initially delayed by five years when the law came into force.

A medicinal plant cultivated for commercial purposes in Ontario, American ginseng was once the second-most important Canadian export after fur.⁴⁰ Wild members of this species grow in rich, mature deciduous forests in southern Ontario. A plant that is long-lived but slow to mature, it is threatened by habitat loss and degradation and poaching. Its small population sizes make it particularly vulnerable to disturbance.⁴¹ According to Jean-Francois Dubois, senior wildlife enforcement officer with Environment Canada, wild ginseng is Canada's "ivory," fetching poachers hundreds or even thousands of dollars per plant. There are only about two-dozen viable populations of wild ginseng left in Canada.⁴²

⁴⁰ Environment Canada. American ginseng (*Panax quinquefolius*), p. 1.

Available at: https://www.ec.gc.ca/CITES/9E21FDBF-3F22-4CAA-9417-C656C9DBEDAB/1366_American%20Ginseng_04_e_WEB.pdf

⁴¹ Ministry of Natural Resources and Forestry. American ginseng. Available at: <https://www.ontario.ca/page/american-ginseng>.

⁴² Crawford, A. July 26, 2017. CBC. Canada's endangered wild ginseng under threat from poachers.

Available at: <http://www.cbc.ca/news/politics/wild-ginseng-poaching-endangered-plants-1.4212920>.

**AT RISK:
EASTERN PONDMUSSEL**

**LISTED AS ENDANGERED UNDER THE ESA:
FEBRUARY 18, 2009**

**RECOVERY STRATEGY DUE:
FEBRUARY 18, 2010**

**RECOVERY STRATEGY OVERDUE:
MORE THAN SEVEN YEARS**

The eastern pondmussel, with a Canadian distribution restricted to Ontario, was once one of the most common freshwater mussel species in the lower Great Lakes.⁴³ It is thought to have disappeared from more than 90 per cent of its historic range in Canada. Remaining populations are small and declining.⁴⁴ Like all freshwater mussels, which are among the most highly endangered animals in the world, the eastern pondmussel is a food source for other wildlife and fulfils an important ecological role filtering and purifying water.⁴⁵

The greatest threat to the eastern pondmussel is the invasive non-native zebra mussel,⁴⁶ introduced to the Great Lakes in the ballast water of ships from Europe in the late 1980s. The zebra mussel attaches to other mussels in large numbers, causing them to suffocate or die from starvation by outcompeting them for food and habitat.⁴⁷

Habitat loss and degradation from human activities, including water pollution, increasing siltation and nutrient loading, as well as changing water levels resulting from climate change, also threaten remaining eastern pondmussel populations in Ontario.⁴⁸



Alamy Stock Photo

⁴³ Ministry of Natural Resources and Forestry. Eastern pondmussel. Available at: <https://www.ontario.ca/page/eastern-pondmussel>.

⁴⁴ Fisheries and Oceans Canada. Eastern pondmussel.

Available at: <http://www.dfo-mpo.gc.ca/species-especes/profiles-profils/pondmussel-ligumie-pointue-eng.html>.

⁴⁵ Fisheries and Oceans Canada. Eastern pondmussel. <http://www.dfo-mpo.gc.ca/species-especes/profiles-profils/pondmussel-ligumie-pointue-eng.html>.

⁴⁶ Ministry of Natural Resources and Forestry. Eastern pondmussel. Available at: <https://www.ontario.ca/page/eastern-pondmussel>.

⁴⁷ Fisheries and Oceans Canada. Eastern pondmussel.

Available at: <http://www.dfo-mpo.gc.ca/species-especes/profiles-profils/pondmussel-ligumie-pointue-eng.html>.

⁴⁸ Ibid.



Photo by Anneke

**AT RISK:
GYPSY CUCKOO BUMBLE BEE**

**LISTED AS ENDANGERED UNDER THE ESA:
MARCH 31, 2015**

**RECOVERY STRATEGY DUE:
MARCH 31, 2016**

**RECOVERY STRATEGY OVERDUE:
MORE THAN ONE YEAR**

Though never numerous compared to other bumble bees, the gypsy cuckoo bumble bee has been recorded historically in every Canadian province and territory except Nunavut. Recent survey efforts have located it in only three provinces. Once found throughout most of Ontario, the gypsy cuckoo bumble bee is now known to occur only in Pinery Provincial Park.⁴⁹

The gypsy cuckoo bumblebee is a parasitic bee entirely dependent on the presence of suitable host species. In Ontario, its host species include the rusty-patched bumble bee and the yellow-banded bumble bee, both at risk. Thus one of the main factors in the decline of the gypsy cuckoo bumblebee is the decline of these and other bumble bee species.⁵⁰

Other potential threats include exposure to pesticides (particularly neonicotinoids, which are harmful even in low concentrations⁵¹), introduction of pathogens from managed bee colonies, habitat loss and climate change.⁵²

⁴⁹ Committee on the Status of Species at Risk in Ontario (COSSARO). 2014. Ontario Species at Risk Evaluation Report for Gypsy Cuckoo Bumble Bee (*Bombus bohemicus*). Available at: www.ontario.ca/page/ontario-species-risk-evaluation-report-gypsy-cuckoo-bumble-bee-bombus-bohemicus.

⁵⁰ Ministry of Natural Resources and Forestry. Gypsy Cuckoo Bumble Bee. Available at: <https://www.ontario.ca/page/gypsy-cuckoo-bumble-bee>.

⁵¹ Committee on the Status of Species at Risk in Ontario (COSSARO). 2014. Ontario Species at Risk Evaluation Report for Gypsy Cuckoo Bumble Bee (*Bombus bohemicus*), Section 1.5.1.

Available at: www.ontario.ca/page/ontario-species-risk-evaluation-report-gypsy-cuckoo-bumble-bee-bombus-bohemicus.

⁵² Ministry of Natural Resources and Forestry. Gypsy Cuckoo Bumble Bee. Available at: <https://www.ontario.ca/page/gypsy-cuckoo-bumble-bee>.

**AT RISK:
CHIMNEY SWIFT**

**LISTED AS THREATENED UNDER THE ESA:
SEPTEMBER 10, 2009**

**RECOVERY STRATEGY DUE:
SEPTEMBER 10, 2011**

**RECOVERY STRATEGY OVERDUE:
MORE THAN FIVE YEARS**

Approximately one quarter of the chimney swifts' breeding range is in Canada,⁵³ where populations have been declining by 7.8 per cent a year since 1968, representing a total decline of 95 per cent in just under 50 years.⁵⁴ A small insectivore, the chimney swift faces a host of threats, including habitat loss (it used to roost in hollow old trees) and the decline of its primary food source, insects.

Besides being one of numerous species at risk for which the recovery strategy is years overdue, the chimney swift is also a species covered by an exemption regulation. Building owners are allowed to destroy chimneys in which this species is known to nest and roost as long as conditions are met. One of these conditions is that new chimney swift towers be erected. Unfortunately, this replacement habitat has proven unsuccessful: 30 to 40 chimney swift towers have been erected in Ontario to date, but not one has been used by chimney swifts.⁵⁵ A recent study in London, Ontario, shows very little provincial intervention to protect known chimney roosting sites.⁵⁶ Regardless, the exemption regulation fails completely to deal with the likely primary cause of decline: the impacts of pesticide use on insect populations.⁵⁷



Photo by Zak Pohlen

⁵³ Environment Canada. Chimney swift. Available at: http://www.registrelep-sararegistry.gc.ca/species/speciesDetails_e.cfm?sid=951.

⁵⁴ Ibid.

⁵⁵ Scallen, D. Spring 2018 (to be published). Nesting instincts. *Ontario Nature* magazine.

⁵⁶ Wake, W. 2017. The conservation of chimneys used by Chimney Swifts in London, Ontario, 2004 to 2015. Ontario Birds. Available at: https://www.mbchimneyswift.com/Documents/Wake2017_ONbirds.pdf.

⁵⁷ New York Times Magazine. October 19, 2017. Where's the Buzz? German Study Finds Dramatic Insect Decline.



CHOICE FOR A BRIGHTER FUTURE

When the Government of Ontario passed its first endangered species legislation in 1971, it stepped into a clear leadership role nationally. It did so again in 2007 with the passing of the ESA, which was designed to address the weaknesses of the original law. Yet, over the past 10 years, ineffective, half-hearted implementation has called into question the depth of the government's commitment and eclipsed, bit by bit, the ESA promise of species recovery.

The problem, at least in part, lies with the dual and conflicting mandate of the MNRF, responsible not only for protecting biodiversity, but also for "promoting economic opportunities in the resource sector."⁵⁸ Certainly, in terms of ESA implementation, the ministry has not prioritized the law's fundamental purpose: the recovery of species at risk. As the regulatory exemptions indicate, MNRF has chosen to put the interests of industry first, over the recovery of Ontario's most imperilled species.

The past 40 years have witnessed unbridled exploitation of the natural world, resulting in sharp and unprecedented declines of even once common species, like the American eel and the chimney swift. If the current trajectory holds, the future for much life on the planet looks grim.

It's time to choose a different path. Those who care deeply about the natural world must continue to advocate for the protection and recovery of biodiversity. The bald eagle and the peregrine falcon can serve as beacons of hope. Both species are on the road to recovery because the political leaders of the day chose to stand up to industry lobbyists and ban the pesticide DDT in 1972. Their choice was science-based and in the public interest.

The ESA could be a powerful tool if used as Ontario's legislature had originally intended; for example, if the government treated ESA exemptions as the exception rather than the rule, and if it adhered to legislated deadlines. Is this too much to expect of our government?

The current lack of transparency, exemptions, and delays in recovery strategies are indicative of a grossly inadequate approach to recovering Ontario's at-risk species. It's time to prioritize the protection and recovery of species at risk in Ontario. If the Ministry of Natural Resources and Forestry is unwilling or unable to do so, then the government should reassign the responsibility to a ministry that will.

Blanding's Turtle
Photo by Diana Troya

⁵⁸ Ministry of Natural Resources and Forestry. Available at: <https://www.ontario.ca/page/ministry-natural-resources-and-forestry>.



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