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August 20, 2019

**RE: REQUESTING ADDITIONAL INFORMATION TO BE CONSIDERED IN THE  
DEVELOPMENT OF RECOVERY STRATEGIES FOR NINE SPECIES AT RISK  
(ERO # 019 – 0189)**

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The Canadian Environmental Law Association welcomes this opportunity to provide comments to the Ministry of Environment, Conservation and Parks (MECP) pertaining to the development of recovery strategies for nine of Ontario’s species at risk (ERO # 019-0189).<sup>1</sup> Our comments, below, are limited to the recovery strategies for the Blanding’s Turtle and three species of bats.

### About Us

The 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.<sup>2</sup> For nearly 50 years, CELA has used legal tools, undertaken ground-breaking research and conducted public interest advocacy to increase environmental protection and the safeguarding of communities. We work towards protecting human health and our environment by actively engaging in policy planning and seeking justice for those harmed by pollution or poor environmental decision-making.

### **I. Preliminary Remarks Regarding Amendments to the *Endangered Species Act, 2007***

In addition to our recovery strategy-specific comments below, we would like to highlight our concerns about potential changes to Ontario’s *Endangered Species Act, 2007* (“ESA”) which may impact these recovery strategies.

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<sup>1</sup> Environmental Registry of Ontario, “Requesting additional information to be considered in the development of recovery strategies for nine species at risk” (22 July 2019) online: <https://ero.ontario.ca/notice/019-0189>

<sup>2</sup> Online: [www.cela.ca](http://www.cela.ca)

On May 2, 2019, the Ontario government introduced Bill 108 (the proposed *More Homes, More Choice Act, 2019*) for First Reading.<sup>3</sup> Schedule 5 of the Bill proposed to amend the *Endangered Species Act, 2007* (“Schedule 5”). On June 6, 2019, the Bill received Royal Assent.<sup>4</sup>

Currently, the *ESA* requires that within 9 months of a recovery strategy being prepared, the Minister must publish a statement of actions it intends to take in response.<sup>5</sup> Schedule 5, however, introduces an exemption to this requirement. Accordingly, subsection 12.1(3) allows the Minister to exceed the 9 months should they state that they need additional time and, provide an estimated completion date.<sup>6</sup>

### **Government response statements**

12.1 (1) Where a recovery strategy or management plan is prepared under section 11 or 12, the Minister shall publish a statement that sets out the policy with respect to the actions that the Government of Ontario intends to take in response to the recovery strategy or management plan, and the Government’s priorities with respect to taking those actions.

### **Place of publication**

(2) A government response statement shall be published on a website maintained by the Government of Ontario.

### **Time limit**

(3) A government response statement shall be published within nine months after the recovery strategy or management plan is made available to the public, subject to subsection (4).

### **Same**

(4) The time limit in subsection (3) does not apply to a government response statement if, before the expiry of the nine months, the Minister publishes a notice on a website maintained by the Government of Ontario that,

- (a) states that the Minister is of the opinion that additional time is required to prepare the statement;
- (b) sets out the reasons for the Minister’s opinion; and
- (c) provides an estimate of when the statement will be published

Also, while the *ESA* currently specifies that within 5 years of government’s response to a recovery strategy it must review the progress towards the protection and recovery of the species,<sup>7</sup> Schedule 5 adds a workaround to the 5 year rule, providing an alternative timeframe of a “time specified in the government response statement.”<sup>8</sup>

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<sup>3</sup> Bill 108, *An Act to amend various statutes with respect to housing, other development and various other matters*, 1st Sess, 42nd Parl, Ontario, 2019, Schedule 5, online: [https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2019/2019-06/b108ra\\_e.pdf](https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2019/2019-06/b108ra_e.pdf) [Schedule 5]

<sup>4</sup> *Ibid*

<sup>5</sup> *ESA*, s 11(8), 12(5)

<sup>6</sup> Schedule 5, subsection 12.1(4)

<sup>7</sup> *ESA*, s 11(11)

<sup>8</sup> Schedule 5, subsection 12.2(2)(a)

We raise these provisions within the context of this submission as it is unclear what effect amendments to the current *ESA*'s timelines will have for these draft recovery strategies. While section 55(3) of Schedule 5 states that the "Lieutenant Governor in Council may make regulations with respect to any transitional matters resulting from the enactment of Schedule 5," these regulations are currently not set out and thus the effects on current draft recovery strategies unknown.

We submit that MECP should not advance transitional regulations which would delay Ministerial responses to recovery strategies or restart their review or implementation. We respectfully request that these recovery strategies be permitted to continue under the provisions of the existing *ESA* as any change which delays their implementation may cause further harm to already at-risk populations and threaten their survival or recovery.

**Recommendation No. 1:** The Recovery Strategies listed in the Environmental Registry Notice should proceed within the existing *ESA* timeframes and not be subject to section 12.1 of Schedule 5, nor transitional regulations which may delay their implementation.

## **II. Recommendations on the Draft Recovery Strategies**

### **A. Blanding's Turtle**

Based on our review of the draft Blanding's Turtle recovery strategy, we note that some studies which would have been relevant to the draft may not have been taken into account.<sup>9</sup> For instance, a large bank of information collected during a three-year telemetry study conducted by the Ministry of Natural Resources and Forestry (MNRF), which commenced in 2007, tagged individual turtles and solicited observations from the public. While it successfully confirmed dozens of observations and georeferenced photographs, it appears that this information was not considered in the draft Recovery Strategy.

Secondly, we question the Recovery Strategy's statement that there were only 285 occurrences of Blanding's turtle in Ontario and Quebec. As the draft states:

Critical habitat for Blanding's turtle...is partially identified in this recovery strategy as it may be insufficient to meet the population and distribution objectives for the species. In Ontario and Quebec, a total of 285 Blanding's turtle records do not fulfill the occupancy criterion (single records) and therefore critical habitat was not identified at those locations. In total, 40 of the 168 extant element occurrences in Ontario and Quebec correspond to single records and thus do not fulfill the occupancy criteria.

Further information should be included in the Recovery Strategy to discern how the Ministry conducted its review of data and studies, and how it arrived at its conclusion of 285 records. Further details should also be provided which are specific to Ontario.

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<sup>9</sup> MECP, "DRAFT Blanding's Turtle (*Emydoidea blandingii*) in Ontario – Ontario Recovery Strategy Series" (2019): online: <https://prod-environmental-registry.s3.amazonaws.com/2019-06/DraftRS-BlandingsTurtle-2019-06.pdf>

**Recommendation No. 2:** We request the Ministry revise the Blanding’s Turtle Recovery Strategy to provide more detailed information regarding the sampling methodology, records, studies and data relied upon in making its findings. We also request information specific to Ontario be set out.

### **B. Three bat species - Little Brown Myotis, Northern Myotis, Tri-colored Bat**

In response to the draft Recovery Strategy for three species of bat (Little Brown Myotis, Northern Myotis and the Tri-colored bat), we provide the following comments and recommendations.<sup>10</sup>

First, while this draft Recovery Strategy overall provides greater detail than that of the Blanding’s Turtle, it too is limited in its discussion of the studies referenced and data which informed the Strategy’s findings. We also submit that the Recovery Strategy is Southern Ontario-centric and fails to consider the landscape and habitat features unique to Northern Ontario.

Secondly, we request the Recovery Strategy be updated to prioritize efforts which respond to white-nose syndrome (WNS). While the quality of habitat, such as roosts and hibernacula, are critical to these bat species’ long-term survival, without aggressive action on WNS, there is the possibility that there will not be bats left to occupy these critical habitats.

Lastly, we recommend the Recovery Strategy include greater detail on improving existing site conditions for bat roosting and hibernating. For instance, there is data confirming that bats use bridges in a few locations in Northeastern Ontario. Therefore, there is the potential that bridges could be designed in a way which are more bat friendly. There are examples of bridges which are engineered in such a way that they are bat-friendly (ie. the Congress Avenue Bridge in Texas) and these considerations, in addition to habitat protection, should also inform the Recovery Strategy’s recommendations.

**Recommendation No. 3:** The draft Recovery Strategy for three species of bat should include in its review, features and analysis unique to Northern Ontario. We also request that the draft be updated to prioritize efforts to study and respond to white-nose syndrome. Lastly, we recommend the Recovery Strategy be updated to include considerations of bat-friendly design which can be incorporated into infrastructure projects, such as bridges.

### **III. Conclusion**

CELA reiterates its recommendations that:

- The Recovery Strategies listed in the Environmental Registry Notice should proceed within the existing *ESA* timeframes and not be subject to section 12.1 of Schedule 5, nor transitional regulations which may delay their implementation.

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<sup>10</sup> MECP, “DRAFT Little Brown Myotis, Northern Myotis and Tri-colored bat in Ontario – Ontario Recovery Strategy Series” (2019), online: [https://prod-environmental-registry.s3.amazonaws.com/2019-06/DraftRS-3Bats-2019-06-12\\_1.pdf](https://prod-environmental-registry.s3.amazonaws.com/2019-06/DraftRS-3Bats-2019-06-12_1.pdf)

- We request the Ministry revise the Blanding's Turtle Recovery Strategy to provide more detailed information regarding the sampling methodology, records, studies and data relied upon in making its findings. We also request information specific to Ontario be set out.
- The draft Recovery Strategy for three species of bat should include in its review, features and analysis unique to Northern Ontario. We also request that the draft be updated to prioritize efforts to study and respond to white-nose syndrome. Lastly, we recommend the Recovery Strategy be updated to include considerations of bat-friendly design which can be incorporated into infrastructure projects, such as bridges.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

A handwritten signature in black ink, appearing to read "Kerrie Blaise". The signature is written in a cursive, flowing style.

Kerrie Blaise, Northern Legal Counsel