



## Summary of Priority Proposed Amendments to Bill 55 (in order of importance)

Amend SCHEDULE 19, ENDANGERED SPECIES ACT, 2007, by striking section 5. .... 2

Amend SCHEDULE 19, ENDANGERED SPECIES ACT, 2007, section 1 by replacing “50” with “10”; striking “or in any other area prescribed by the regulations”; and adding “and under the conditions prescribed by regulation” after “the person’s primary residence” in proposed subsection 10.1(4) ..... 3

Amend SCHEDULE 19, ENDANGERED SPECIES ACT, 2007, subsection 2(3) by replacing “a date prescribed by the regulations” with “the seventh anniversary of the date section 7 comes into force” ..... 4

Amend SCHEDULE 15, CROWN FOREST SUSTAINABILITY ACT, 1994 by striking section 4. .... 4

Amend SCHEDULE 58, PROVINCIAL PARKS AND CONSERVATION RESERVES ACT, 2006 by striking subsection 1(4), and replacing it with subsection 1(4.1) which reads as follows (4.1) Subsection 10 (7) of the Act is repealed and the following substituted: Examination of management directions 10.(7) The Ministry shall, every 2 years and in an order determined by the Ministry, examine management directions that have been in place for 10 years or more and shall determine the need for amendment or review of the directions. .... 5

Amend SCHEDULE 19, ENDANGERED SPECIES ACT, 2007, section 1 by striking “, (a) will assist in the protection or recovery of a species; or (b)” in proposed subsection 10.1(5) ..... 5

Amend SCHEDULE 59, PUBLIC LANDS ACT section 1 by adding new subsection ..... 6

Amend SCHEDULE 34 LAKES AND RIVERS IMPROVEMENT ACT, subsection 2(1), by inserting “, in accordance with the regulations and with guidelines approved by the Minister” at the end of proposed subsection 23.1(1)..... 7

## Introduction

As indicated in our legal analysis released in April 2012, Ecojustice is deeply concerned with the proposed amendments to various environmental statutes in Bill 55, the proposed Strong Action for Ontario Act (Budget Measures), 2012.<sup>1</sup> As we stated in our legal analysis, overall concerns are twofold:

- OMNIBUS BUDGET BILLS, which contain amendments to several environmental statutes, do not ensure adequate time for the public to participate in government decision making regarding

<sup>1</sup> Available on-line: [http://www.ecojustice.ca/ecojustice-cela-legal-analysis-re-bill-55-ontario-budget-2012/at\\_download/file](http://www.ecojustice.ca/ecojustice-cela-legal-analysis-re-bill-55-ontario-budget-2012/at_download/file)



legislative proposals that may be environmentally significant. The exception from the public participation requirements mandated in the *Environmental Bill of Rights, 1993* specifically for amendments to law and policies that give effect to budget implementation presumes that the impact of the proposed amendments will not be environmentally significant.

- INCREASED REGULATORY DISCRETION will mean less transparency, certainty and predictability. This is an inevitable and unacceptable consequence of streamlining public interest legislation.

Further, the overarching purpose of budget implementation legislation is financial in nature. We assume that proposed legislative changes in Bill 55 are motivated only by the need to achieve financial efficiencies for the province. As such, we expect that all the proposed legislative changes will be policy neutral with respect to the purposes of the environmental statutes that are to be amended. We are concerned that this is not the case in some of the proposed amendments.

We recommended in our initial legislative analysis that the proposed amendments to environmental statutes, particularly those related to species protection, sustainable forest operations, protected areas, lakes and rivers protection, and public lands be withdrawn from the Schedules of Bill 55 and that the proposed amendments be reconsidered in light of our comments. Proposed changes can then be reintroduced as stand-alone bills, providing the opportunity for public participation in compliance with Part II of the *Environmental Bill of Rights, 1993*. And, given that we demonstrated in our initial legislative analysis that there is potential to have environmental impacts as a result of the proposed amendments that are not in keeping with the purpose of the specific environmental legislation, the above-noted Schedules should be removed because we believe they are not purely financial in nature. The need for public discourse about any potential financial efficiencies and whether the proposed changes are truly policy neutral is further emphasized.

If the suggested Schedules will not be removed from Bill 55, we recommend that the following priority amendments (in order of importance) be made at a minimum.

### **Amend SCHEDULE 19, ENDANGERED SPECIES ACT, 2007, by striking section 5.**

Rationale: Under this section in the current ESA framework, an instrument under another piece of legislation can have the effect of a permit if certain conditions are met. Currently, an exemption under section 18 would only be granted if:

- (i) the Minister was of the opinion that the activity authorized by the instrument was necessary for the protection of human health or safety,



- (ii) the Minister was of the opinion that the main purpose of the activity authorized by the instrument was to assist, and that the activity would assist, in the protection or recovery of the species specified in the instrument, or
- (iii) the Minister was of the opinion that the main purpose of the activity authorized by the instrument was not to assist in the protection or recovery of the species specified in the instrument, but,
  - a. the Minister was of the opinion that an overall benefit to the species would be achieved within a reasonable time through requirements imposed by the instrument,
  - b. the Minister was of the opinion that reasonable alternatives had been considered, including alternatives that would not adversely affect the species, and the best alternative was adopted, and
  - c. the Minister was of the opinion that reasonable steps to minimize adverse effects on individual members of the species were required by the instrument.

The Minister’s power to grant exemptions will be much broader and will no longer be subject to preconditions designed to protect species at risk and their habitat – e.g. the changes would remove the requirement that the Minister consider a section 11(8) statement with respect to a recovery strategy prior to granting an exemption; the changes would also eliminate the existing preconditions of overall benefit, alternatives considered, and minimized adverse impact on species (set out in ESA, clause 18(1)(e); e.g., preconditions which are the same for permits set out in the section 17 permitting scheme). In essence, the exemption will allow that instruments (such as a Permit to Take Water under the *Ontario Water Resources Act*) to be exempted from prohibitions contained in the ESA. Only noncompliance with the specific instrument or with any “conditions prescribed in the regulations” will bring the instrument holder to account for violations of the ESA.

**Amend SCHEDULE 19, ENDANGERED SPECIES ACT, 2007, section 1 by replacing “50” with “10”; striking “or in any other area prescribed by the regulations”; and adding “and under the conditions prescribed by regulation” after “the person’s primary residence” in proposed subsection 10.1(4)**

so that it reads as follows:

(4) The exemptions described in subsection (1) apply to a person who is engaged in a non-commercial activity on lands, other than public lands, that are within ~~50~~ 10 metres of the person’s primary residence ~~or in any other area prescribed by the regulations~~ and under the conditions prescribed by regulation.



Rationale: With respect to new exemptions from the prohibitions in the ESA for non-commercial activities on private property, the drafting suggests that the exemption would apply to areas within 50 metres of a primary residence OR in any area that is outlined in a regulation, potentially allowing for sweeping exemptions on private land. Presumably, this exemption is intended to apply if, for example, a species at risk were to find its way into the window well of a person's house. Removing the species to another location would then not be a violation of the ESA. However, the exemption would also allow the animal or plant to be killed and any habitat for threatened or endangered species to be destroyed within the exempted area. The wording allows for much more potential damage than the presumed intent would require. In addition, the drafting allows exemptions of non-commercial activities on private land to be expanded beyond the "proximity to primary residence" exemption, if listed in a regulation. Further, the distance that is the default "proximity to primary residence" (50 metres) will create a significant area in which species are not protected. In order to ensure that the purpose of the species protection legislation is met, and provided for exceptions that are limited to the type described above, it is recommended that the default distance be reduced to 10 metres and that the conditions under which the exemption is applied be prescribed in regulation.

### **Amend SCHEDULE 19, ENDANGERED SPECIES ACT, 2007, subsection 2(3) by replacing "a date prescribed by the regulations" with "the seventh anniversary of the date section 7 comes into force"**

so that it reads as follows:

(3) Clause 11 (4) (c) of the Act is amended by striking out "the fifth anniversary of the date section 7 comes into force" and substituting "~~a date prescribed by the regulations~~ the seventh anniversary of the date section 7 comes into force".

Rationale: Delay in producing and implementing recovery strategies, and in defining and protecting the habitat species need to survive and recover, will in our view generally harm species at risk in Ontario. The extension of deadlines is generally of concern and the potential indefinite extension for endangered or threatened species that were listed as of the time the Ontario ESA came into force is of greatest concern.

### **Amend SCHEDULE 15, CROWN FOREST SUSTAINABILITY ACT, 1994 by striking section 4.**

Rationale: Currently, forest operations are only permitted in accordance with an FMP, any regulatory requirements, and a work schedule (approved by the Minister). The only exception is for a licence that is less than one year if the total area is less than 25 hectares (CFSA, subsection 47(2)). The proposed



amendment will allow another exception to be made in circumstances “prescribed by regulation”. This provides a great deal of discretion to allow forest operations outside the requirements of an FMP/work schedule. Since an FMP is the only mechanism for ensuring forest sustainability, allowing greater ability to exempt operations from this requirement is of deep concern.

**Amend SCHEDULE 58, PROVINCIAL PARKS AND CONSERVATION RESERVES ACT, 2006 by striking subsection 1(4), and replacing it with subsection 1(4.1) which reads as follows**

**(4.1) Subsection 10 (7) of the Act is repealed and the following substituted:**

**Examination of management directions**

**10.(7) The Ministry shall, every 2 years and in an order determined by the Ministry, examine management directions that have been in place for 10 years or more and shall determine the need for amendment or review of the directions.**

Rationale: The proposed amendment to subsection 10(7) of the PPCRA will give the Ministry complete discretion to determine whether 10-year-old (or older) management directions should be “examined”. Currently, the Ministry is mandated to annually examine any management direction that has been in place for 10 years. In a time of declining resources dedicated to the Ministry of Natural Resources, capacity to ensure the regular assessment of the need to examine outdated management directions may be compromised without legislative impetus to do so. Regular review of management directions, to ensure that evolving knowledge regarding ecological integrity is incorporated into protected areas planning is crucially important to meeting the purpose of the PPCRA. However, the Ministry should be mandated to conduct their review on a less frequent basis, achieving financial efficiencies and ensuring regular assessment.

**Amend SCHEDULE 19, ENDANGERED SPECIES ACT, 2007, section 1 by striking “, (a) will assist in the protection or recovery of a species; or (b)” in proposed subsection 10.1(5)**

so that it reads as follows:

(5) The exemptions described in subsection (1) apply to a person who is engaged in an activity that,

~~(a) will assist in the protection or recovery of a species; or~~



(b) is necessary to avoid a threat to human health or safety that is unacceptable in the circumstances and, though not imminent, is pressing, including an activity that is required,

- (i) to preserve, repair or remove an existing structure,
- (ii) to protect the quality of earth, air or water, or
- (iii) to prevent or reduce the spread of disease.

Rationale: Regarding activities related to protecting/recovering a species at risk, there is already provision for stewardship agreements (ESA, section 16). By exempting such activities, the requirement of a stewardship agreement can be avoided (and similarly the requirement that the Minister consider a statement with respect to a recovery strategy). Although this exemption will likely reduce administrative costs, it also prevents the Minister from using the ESA to ensure compliance with specific, written requirements of a stewardship agreement (pursuant to ESA, subsection 16(4)). For example, if the activities authorized under a stewardship agreement are not complied with, the authorization is no longer in effect and the individual conducting the activities would be subject to the enforcement provisions of the ESA. Under an exemption, if the activities are not related to protecting/recovering a species at risk, the Ministry would have a much more difficult time proving that the exemption does not apply than would be the case under a written agreement.

## **Amend SCHEDULE 59, PUBLIC LANDS ACT section 1 by adding new subsection**

(3.1) The person or body referred to in subsection (3) are:

1. A municipality.
2. A conservation authority.
3. A designated administrative authority within the meaning of the *Delegated Administrative Authorities Act* that is prescribed by the regulations.

Rationale: If the intention of the proposed amendments to PLA section 2 is to allow for delegation to municipalities or conservation authorities, this should be made make that explicit, rather than leaving the determination of delegation to regulation, which is much more easily amended than legislation. Flexibility to designate to other authorities should be subject to the proposed Delegated Authorities Act (Bill 55, Schedule 16).



**Amend SCHEDULE 34 LAKES AND RIVERS IMPROVEMENT ACT,  
subsection 2(1), by inserting “, in accordance with the regulations and  
with guidelines approved by the Minister” at the end of proposed  
subsection 23.1(1)**

so that it reads as follows:

(1) If the Minister considers it necessary or expedient for the purposes of this Act, the Minister may order the owner of a dam or other structure or work that has been constructed on a lake or river, or a person who has applied under section 14 or 16 for an approval to construct, alter, improve or repair a dam, other structure or work on a lake or river, to prepare or amend a plan for the operation and maintenance of the existing or proposed dam, other structure or work, or to participate in the preparation or amendment of such a plan, in accordance with the regulations and with guidelines approved by the Minister.

Rationale: Currently under LIRA, section 23.1, the Minister may order the owner of an existing or new dam to prepare or amend a management plan for the operation and maintenance of a dam, in accordance with the regulations and with guidelines approved by the Minister. A proposed amendment to this section would remove the requirement that the management plan be prepared in accordance with regulations and guidelines. This broadens the discretion of the Minister in what is required in a management plan. At the same time, it does not provide guidance or ensure consistency with respect to what is required in a management plan.