February 8, 2025

Species at Risk Protection Policy Section
300 Water Street
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Peterborough, ON K9J 3C7

Re: **ERO 019-9411**: *Regulatory changes under the Endangered Species Act to extend application of conditional exemptions to newly listed species and update the conditional exemption for the operation of wind facilities*

To whom it may concern:

Thank you for the opportunity to provide comments on ERO 019-9411[1]. We are submitting this feedback as scientists with Wildlife Conservation Society (WCS) Canada (www.wcscanada.org) -- a national non-governmental organization with a mission to provide evidence-based technical guidance and policy recommendations to decision-makers.

Our expertise in the assessment, research, stewardship, and recovery of species at risk (SAR) in Ontario and across Canada, including migratory bats, stems from our field-based science and conservation work in northern Ontario since 2004 and our comprehensive bat conservation program, established in 2011, which has focused on advancing research, monitoring, and policy recommendations to protect bat populations across western Canada.

In this letter, we first provide comments on the general approach of conditional exemptions under O. Reg. 242/08 to establish essential context for our feedback on: 1) the proposed extension of this regulation to newly listed species at risk, followed by 2) the specific focus on wind energy facilities.

In summary, *Ontario's proposed regulatory changes through ERO 019-9411 would extend conditional exemptions in O. Reg. 242/08 (Endangered Species Act) to newly listed species at risk and update existing exemptions for wind energy facilities, specifically impacting three endangered migratory bat species. While conditional exemptions streamline approvals, their effectiveness in minimizing harm remains unproven due to a lack of oversight, monitoring, and attention to cumulative impacts. Expanding this flawed framework without addressing these shortcomings risks further habitat degradation and species declines. Evidence collected by the Ontario Auditor General in 2021 highlights critical gaps within the ESA's approvals regime in enforcement, transparency, and cumulative impact assessment—issues that must be addressed for exemptions to serve a meaningful purpose and improve the trajectory for species at risk. Strengthening oversight, improving data collection, and implementing adaptive management strategies are necessary to prevent continued declines. Wind energy is essential for addressing climate change and must expand to support the transition away from fossil fuels, but bats also play a vital role in ecosystems and the economy, and wind facilities are now the leading source of direct mortality for migratory bats. Preventing further harm requires more than well-intentioned conditions—it demands thoughtful design and effective oversight. What we propose is neither excessive nor impractical; it is a science-based approach that avoids the pitfalls of short-term thinking and the inevitable long-term costs of inaction.*

[1] https://ero.ontario.ca/notice/019-9411

General remarks on O. Reg. 242/08

Since its introduction in 2013, the conditional exemption approach under Ontario's Endangered Species Act (ESA), through O. Reg. 242/08, has undeniably achieved its primary goal: streamlining approvals for activities that may harm species at risk. While many of the regulation's conditional exemptions are framed as harm mitigation measures, there is little to no evidence that they have reduced harm, let alone contributed to species recovery. The general absence of monitoring and evaluation makes it impossible to assess their effectiveness or adapt them as needed. Without oversight or consideration of cumulative impacts, the more likely outcome is ongoing habitat degradation and population declines, rather than any meaningful conservation benefit.

A 2021 audit by the Ontario Auditor General[2] provided a detailed analysis of the implementation track record to date, highlighting critical shortcomings in oversight and enforcement. The audit found that no inspections had been conducted to ensure compliance with conditional exemption requirements, despite thousands of approvals being issued under the ESA since 2007. Additionally, the Ministry of the Environment, Conservation and Parks (MECP) was not assessing the cumulative impact of these approvals on species at risk and their habitats. Years of unchecked, site-specific approvals under this framework have resulted in a regulatory blind spot, where the accumulation of harm is unknown and cannot be assumed to be negligible, despite Ontario's repeated assurances (as in ERO 019-9411) that species protections are maintained.

The Auditor General made multiple recommendations for improvement, including charging fees for approvals that harm species at risk that would provide more revenue to implement species at risk conservation. Yet the Ontario government would not commit to any of these recommendations that might lead to substantive reforms. Now, three years later, this flawed approach not only remains in place but is being extended to even more species, with no assurances that it will improve outcomes for any of them.

We recognize that Ontario's budget decisions have resulted in limited capacity and resources for oversight within MECP. We also acknowledge that greater regulatory scrutiny may place additional demands on project proponents, potentially leading to inconvenient delays. **However, rather than framing this as unnecessary bureaucratic red tape, the focus should be on ensuring that exemptions are structured effectively, their ecological impacts are assessed at meaningful scales, and necessary adjustments are made based on evidence—ultimately helping to avoid more costly and time-consuming remedies in the future**. After all, the purpose of the ESA is not to facilitate development but to safeguard Ontario's at-risk species. Without meaningful enforcement and oversight in the implementation of conditional exemptions, the Act fails to fulfill its most fundamental purpose.

1) Adding New Species to O. Reg. 242/08

Given the flaws in the conditional exemption approach we have just outlined, it is impossible to meaningfully evaluate the proposed addition articulated in ERO 019-9411 of new species to O. Reg. 242/08. Expanding this framework to additional species without addressing these critical shortcomings only increases the risk of further habitat degradation and population declines.

ERO 019-9411states that MECP considered a range of factors in assessing the potential impacts of the proposed amendment, including population size, rarity, habitat overlap with regulated activities, and the likelihood of harm from certain activities. However, none of this information has

[2] Office of the Auditor General of Ontario. 2021. Value-for-Money Audit: Protecting and Recovering Species At Risk. https://www.auditor.on.ca/en/content/annualreports/arreports/en21/ENV_ProtectingSpecies_en21.pdf

been provided for review. Without transparency in how these factors were assessed, it is impossible to determine whether MECP's conclusions articulated in ERO 019-9411are scientifically sound or whether these exemptions are appropriate. This lack of justification is deeply concerning, particularly given the well-documented weaknesses in the implementation and oversight of conditional exemptions. To meaningfully fulfill obligations for consultation, MECP must provide the data and rationale underlying its decisions.

2) Regulatory amendments regarding the conditional exemption for the operation of wind facilities

Bats in Canada provide essential ecological and economic benefits, primarily through their role in controlling insect populations. By consuming vast numbers of moths, beetles, mosquitoes, and other pests, they help protect forests, crops, and public health while reducing reliance on chemical pesticides and expensive biocide applications that increase carbon emissions and have non-target impacts. Migratory bats—including hoary, silver-haired, and eastern red bat—play a particularly important role, traveling long distances between summer breeding grounds in Canada and wintering areas further south. These highly mobile species contribute to pest control across a wide geographic range, benefiting both Canadian and international environments. However, migratory bats face growing threats, with collisions with wind turbines being the leading cause of mortality. In addition, habitat loss, climate change, pollution, and other cumulative pressures further jeopardize their populations[3]. Given their crucial role in insect control—reducing the need for carbon-emitting pest management—and their economic benefits, urgent conservation measures are needed to address these threats and support the survival of both resident and migratory bat species.

We recognize Ontario's positive step in prompt follow-up to the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) assessments for the three migratory bat species and appreciate the intent to be immediately prepared for their official listing in Ontario, which came into effect on January 31. However, for a conditional exemption to be effective in protecting these species, Ontario must depart from the status quo approach outlined in Section 1 above. This requires a fundamental shift toward rigorous enforcement, monitoring, adaptive management, and attention to cumulative impacts—all of which have been absent under the current regime of implementation of conditional exemptions. Several key factors must be considered to help ensure this exemption does not simply facilitate continued population declines:

1) The severity of wind turbine mortality as a known threat to populations of all three species in North America.

2) The probable future rapid escalation of this threat across Ontario, given the expansion of wind energy development.

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[3] Adams, A.M., Trujillo, L.A., Campbell, C.J., Akre, K.L., Arroyo-Cabrales, J., Burns, L., Coleman, J.T., Dixon, R.D., Francis, C.M., Gamba-Rios, M. and Kuczynska, V., 2024. The state of the bats in North America. Annals of the New York Academy of Sciences, 1541(1), pp.115-128.

COSEWIC. 2023. COSEWIC assessment and status report on the Hoary Bat Lasiurus cinereus, Eastern Red Bat Lasiurus borealis and Silver-haired Bat, Lasionycteris noctivagans, in Canada. Committee on the Status of Endangered Wildlife in Canada. Ottawa. xxi + 100 pp. https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry.html;

3) The ineffectiveness of a piecemeal, project-by-project approach that fails to account for landscape-level and cumulative impacts. Mitigating one wind turbine at a time will be insufficient to address the broader, inevitable population-level effects.

4) The Ontario government's track record of failing to ensure compliance with conditional exemptions, which makes an enforcement mechanism essential for any new exemption to be credible.

5) The nature of the impact itself—direct mortality. Unlike habitat loss, which may allow for some level of persistence or recovery, wind turbine collisions cause immediate deaths, which cannot be undone. Moreover, wind turbines impact migratory bats that range over hundreds or thousands of kilometers, leading to broad-scale impacts likely to influence populations across the province and into neighbouring jurisdictions.

Strengthening the Conditional Exemption Approach

While the proposed curtailment approach includes some important elements—such as requiring project registration, mitigation planning, cut-in speed adjustments, carcass monitoring, and reporting—these measures alone are insufficient to ensure that the conditional exemption effectively minimizes harm to migratory bats over time. To make the exemption meaningful and responsive to new data, Ontario must commit to implementing robust oversight, adaptive management mechanisms, and a science-based strategy that ensures wind energy development does not drive further population declines. The following improvements are necessary to support the implementation and long-term effectiveness of the proposed conditional exemption for the operation of wind facilities**:**

- *Commitment to Adaptive Management of Cut-In Speeds*. The proposed curtailment approach must include a mechanism to adjust cut-in speeds over time based on ongoing site-specific monitoring, cumulative bat mortality, and technological advancements. While 7 m/s is a reasonable starting point, higher cut-in speeds will likely be necessary as the number of turbines along migration routes increases. Lower cut-in speeds result in higher bat mortality, and more turbines along migration routes further amplify this risk. Current modeling by Environment and Climate Change Canada suggests that adaptive curtailment thresholds could help delay species extirpations or extinctions. However, as wind energy development expands, operational mitigation alone will not be enough to prevent population declines. Active adaptive management is essential to ensure that protective measures evolve with emerging data on bat behavior and wind facility impacts.

- *Publicly accessible monitoring reports and population-level management*. Mortality data collected from individual wind projects should inform not only site-specific mitigation but also be aggregated and analyzed at a provincial scale. The assumption underlying curtailment threshold modeling to delay extirpations is that new technologies may eventually mitigate the cumulative impacts of wind energy development and prevent species extinctions. To accelerate solutions, public access to wind energy mortality data will be essential, along with mandatory data collection. The Ontario government must commit to using these data to adapt broader regulations and permit requirements dynamically. Population models projecting long-term species declines due to cumulative

mortality along migration routes should inform these efforts, guiding landscape-level mitigation strategies to help prevent further declines in bat populations.

- *Pre-construction siting strategy that operates at both the landscape and site level to reduce risks*. The most effective way to reduce bat mortality from wind turbines is careful siting—avoiding high-risk habitats used by bats. Mitigation should consider not only local bat activity but also the cumulative number of turbines along entire international migration routes to minimize the risk of encounters. Ontario's current approach to wind energy siting is reactive, dealing with bat mortality only after projects are operational. A far more effective approach would be to implement a proactive, science-based strategy at the landscape scale to identify high-risk areas where wind development should be avoided entirely, as well as lower-risk areas that are more suitable for development. This requires modeling bat migration pathways, seasonal activity patterns, and habitat connectivity. Following that, turbine-specific setbacks should be established to protect sensitive areas within wind energy projects. Other jurisdictions, such as Saskatchewan, have Wildlife Siting Guidelines[4] that recommend a 5-km setback from major watercourses and identified landscape features. Ontario's current site-by-site evaluation lacks clear setback requirements, leaving critical habitats vulnerable to project-by-project decisions. By integrating both large-scale planning and site-specific setbacks, Ontario can proactively reduce risks to migratory bats rather than relying on mitigation only after wind facilities are operational.

Conclusions

Wind energy development is a crucial part of addressing climate change and will have to grow to advance the energy transition away from fossil fuels. At the same time, bats play an essential role in maintaining healthy ecosystems and supporting the economy through natural pest control and wind turbines are the largest sources of mortality to migratory bat populations. Making every effort to ensure that wind energy expansion does not further endanger bat populations requires more than just well-intentioned conditions—it demands thoughtful design and effective oversight. This means both structuring conditional exemptions in O. Reg. 242/08 to achieve the *Endangered Species Act*'s intended purpose and committing to ongoing evaluation and adaptation, and adjustment as necessary.

What we are proposing is neither excessive nor impractical; it is a science-based approach that avoids the pitfalls of short-term thinking and the inevitable long-term costs of weak action, as characterized by the implementation of O. Reg. 242/08 to date. By implementing reasonable, proactive measures now, Ontario can support both renewable energy goals and species protection. With existing knowledge and the ability to refine mitigation strategies over time, the province has the opportunity to lead in clean energy development while safeguarding biodiversity.

Submitted by (in alphabetical order): Susan Holroyd, Cori Lausen, Constance O'Connor, Cory Olson, Lynn Palmer, and Justina Ray (https://wcscanada.org/about/contact/).

[4] Saskatchewan Ministry of Environment. 2016. Wildlife Siting Guidelines for Saskatchewan Wind Energy Projects. Report No. 2016-FWB 01. Saskatchewan Ministry of Environment, 3211 Albert Street, Regina, Saskatchewan. https://www.saskatchewan.ca/-/media/news-release-backgrounders/2016/sept/wind-siting-guide.pdf