COMMENT ON ERO 025-0380: Opposition to the Proposed Changes to the Endangered Species Act, 2007

Submitted by: a Member of the Lower Mohawk Band of the Six Nations of the Grand River

I write to express my full and unequivocal opposition to the proposed legislative and regulatory changes outlined in ERO Notice 025-0380.

The proposal represents not only a dangerous rollback of protections for Ontario's species at risk—it is also a direct violation of my Aboriginal, treaty, and inherent Indigenous rights, as protected under Section 35 of the Constitution Act, 1982, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and Canada's own United Nations Declaration on the Rights of Indigenous Peoples Act (UNDRIPA).

As a member of the Lower Mohawk Band of the Six Nations of the Grand River, I carry legal responsibilities to my lands, waters, species, and to the eggs I carry within my body—my future children. These responsibilities are not abstract; they are lived, legal, and grounded in Indigenous law, which mandates that decisions consider seven generations into the future.

This proposed legislation does not even look one year into the future. It is grounded in deregulation and short-term development interests, and it violates my rights—and the rights of future generations—to a healthy environment and to the cultural relationships embedded within it.

Species Protection Includes Habitat—And Habitat Means Ecosystems

There is a common misconception that Indigenous rights relate only to individual species. That is false. Indigenous rights are relational—we do not merely interact with species; we exist in relationship with them, and that relationship includes the ecosystems they inhabit and require to survive.

Every species currently listed under Ontario's Species at Risk registry is of cultural and ecological importance. They each hold ecological, spiritual, and cultural significance, and each is a part of the complex web that sustains not only our communities, but the planet itself. These species have taken millions of years to adapt to the specific environmental conditions of their critical habitat. Once destroyed, their unique genetic lineages and interdependent ecological roles cannot be replaced.

Their habitats must be protected in full—not only in their immediate zones, but including the entire ecological network: the hydrology, soil structure, pollinators, adjacent wetlands and uplands, and everything in between. These are not separate pieces—they are relational systems. Destroying them violates the natural law of balance and directly undermines my ability to practice my culture and responsibilities.

Personal Observations: Environmental Collapse in Real Time

Each year, I travel with my spouse through southern, South-Western, and parts of eastern Ontario on an annual harvesting journey. This is not recreation—it is my treaty-protected, constitutionally affirmed

right. And each year, I watch the territories and ecosystems I am culturally, legally, and ecologically obligated to care for destroyed before my eyes.

Entire forests and hedgerows—20, 30, 50 acres—clear-cut within days. No permits. No environmental review. No oversight. I file reports with MECP. They go nowhere. The staff themselves acknowledge that there's little they can do. This is the state of Ontario's species at risk "protection" under the current law—and now this government proposes to make it worse?

I have seen endangered Colicroot "protected" by nothing more than a fence—while the government permits 50% of an adjacent local population to be bulldozed during development in Windsor. That is not conservation. It is performative compliance masking legal abandonment.

The proposed elimination of permitting will make things catastrophically worse. Once critical habitat is gone, it is gone forever. This is ecological genocide.

Systemic Negligence and First Nations as the Last Line of Defense

In my professional capacity, I regularly meet with developers and proponents of major projects. These proponents hire planners and project managers who do not understand their legal or ecological obligations. I've been directly asked in meetings, "What species at risk are in this area?" They do not do their homework. They do not read legislation. And they are now emboldened by a government that is rolling back what little oversight remains.

A particularly egregious tactic I've witnessed is the commissioning of consultant Environmental Impact Assessment reports based on single site visits, often conducted in late fall—when migratory birds have departed, reptiles and amphibians are hibernating, and tree identification is difficult for the untrained eye due to leaf drop. These reports routinely conclude that "no species at risk were found." Of course none were found—it's biologically predictable. These surveys are designed to produce an illusion of absence, which is then used to argue that the site is not habitat for species at risk.

This is a deceptive practice that misuses the absence of detection as proof of absence, even though ecologists and regulators know full well that absence cannot be proven through single-season, poorly timed surveys. These reports are often hundreds of pages long, filled with technical language and hidden behind layers of data and jargon. Most municipalities lack the capacity to review these reports critically. Most First Nations barely have the capacity to review them either. The average community, staff person, or council simply doesn't have the time, funding, or training to uncover these manipulations. But alas we continue to do so despite the odds stacked against us.

With the fast tracking and erosion of the current permitting process, even this limited possibility of expert review disappears. There will be no formal oversight, no mechanisms for challenge, and no

accountability for deceitful practices. This is not just negligence—it is a systematic failure that rewards ecological misinformation and shifts the entire burden onto Indigenous communities who are already doing too much with too little.

Legal and Scientific Inconsistencies

The legal precedents are clear:

- In Haida Nation v. British Columbia (2004), the Supreme Court established that consultation must occur when there is a real or potential adverse effect on Indigenous rights.
- In Mikisew Cree v. Canada (2005), the Court emphasized that meaningful engagement must take place before decisions are finalized.
- In Clyde River v. Petroleum Geo-Services (2017), the Court found that regulatory bodies cannot circumvent their constitutional duty by avoiding triggers like permitting.

The permit system under the ESA is a trigger. To remove it is to intentionally subvert the law.

Under the federal Species at Risk Act (SARA), the concept of critical habitat is foundational. SARA defines critical habitat as the habitat necessary for the survival or recovery of a listed species, and prohibits its destruction —even if the species is not currently present in that area. The Act also enables protection of critical habitat on provincial lands, particularly where there is a failure to provide equivalent protections. This reflects a scientific understanding that recovery and survival depend on full ecosystem continuity, and that habitat must be protected where a species once lived or could return in future recovery efforts.

Permitting processes must therefore recognize that absence of observation is not absence of habitat. The erosion of the ESA permitting process ignores this scientific and legal reality and allows deliberate mischaracterization of ecological data to go unchecked. Without these processes, Ontario will enable the mass erasure of critical habitat based on bad faith reports, and I know it is the intention that you hope no Indigenous Nation, conservation staff, or technical reviewer will be able to stop it.

Scientifically, the evidence is overwhelming:

- Habitat loss is the single greatest driver of species extinction (IUCN, 2022).
- Ontario's species at risk rely heavily on ecosystems—wetlands, forest edges, tallgrass prairie, and river systems—that are also prime targets for development.
- Peer-reviewed studies confirm that permit systems with independent review are the most effective mechanisms for protecting habitat and ensuring compliance.

The situation with Colicroot (Aletris farinosa) in Windsor, Ontario is a clear example of this failure. Despite being listed as endangered under the ESA, 50% of the local population was permitted to be destroyed. The remaining individuals in other populations are simply surrounded by a fence, or being overtaken by Phragmites -an invasive species- with no meaningful recovery plan, no long-term monitoring, and no ecosystem protection. This is not species recovery—it is abandonment.

Remedy Requested

I am calling for the complete withdrawal of ERO Proposal 025-0380. No amendments, substitutions, or compensations will undo the damage this proposal would cause. The permitting system must remain in place—and must be strengthened, not weakened.

- Retain and expand the permitting system to ensure public accountability, thorough environmental review by professional certified SAR research experts, and the triggering of constitutional consultation.
- Reinstate the technical and ecological review of natural heritage by conservation authorities.
- Establish and enforce strict ecosystem-wide protections, not just pathetic single-species fencing policies.
- Recognize Indigenous legal orders, including the personhood of species and relational ecosystems, in the development of policy and law.

Final Words

This comment is not only mine—it belongs to the seven generations who will come after me, and to the species who have every right to exist, just as you and I do. It belongs to the snapping turtle, the little brown bat, the monarch butterfly, the wood thrush, and the colicroot—all who are watching their world disappear while governments choose profits over life.

You cannot claim reconciliation while gutting the legal mechanisms that protect our rights. You cannot claim ecological responsibility while empowering those who bribe, bulldoze, and bully their way through sacred lands and life-giving ecosystems.

This proposal is not reform. It is ecological genocide. Withdraw it.

Submitted by a Member of the Lower Mohawk Band, Six Nations of the Grand River

References & Citations

- Constitution Act, 1982, Section 35
- Endangered Species Act, 2007, S.O. 2007, c.6
- Ontario Regulation 242/08: General

- Ontario Regulation 230/08: Species at Risk in Ontario List
- United Nations Declaration on the Rights of Indigenous Peoples Act (UNDRIPA), S.C. 2021, c. 14
- Conservation Authorities Act, R.S.O. 1990, c. C.27
- Species at Risk Act (SARA), S.C. 2002, c. 29
- Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73
- Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage), 2005 SCC 69
- Clyde River (Hamlet) v. Petroleum Geo Services Inc., 2017 SCC 40
- Tsilhqot'in Nation v. British Columbia, 2014 SCC 44
- "UNDRIP is Now Part of Canada's Domestic Positive Law" – OKT Law
- IUCN Red List Summary: Drivers of Extinction
- Ontario Species at Risk Program: www.ontario.ca/page/species-risk
- Environmental Defence Reports on Ontario ESA Rollbacks
- Canadian Wildlife Federation SAR Policy Analysis