Ontario’s Species at Risk Protection: Implications for the Integration of the Endangered Species Act and Crown Forest Sustainability Act

by

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ABSTRACT

This study sought to provide recommendations regarding how the ESA-CFSA Integration Project could be implemented to best protect species at risk without threatening the forest industry in Ontario. Taking a case study approach, the two main objectives of the study were to evaluate the implementation to date of the ESA in Ontario and assess the work accomplished by the MNRF with respect to the Integration Project. This was done through a review of the scientific literature and online documents, personal communication with stakeholder representatives, and direct observation. Overall, it was found that while there is significant disagreement between ENGOs and forest industry about the best way to protect species at risk in Crown forests, they both agree that the implementation of the ESA has not been completely successful, and these shared concerns can be used to create meaningful and effective progress on the ESA-CFSA Integration Project. Four recommendations are presented based on the findings: providing a roundtable discussion for all stakeholders, conducting further scientific research on AOC prescriptions and forest management plans, surveying forest managers to determine species at risk protection measures in place under forest management plans, and considering the possibility of requiring forest management plans to also be approved by the Species Conservation policy branch of the MNRF in order to ensure compliance with ESA protection.
1. **INTRODUCTION**

Ontario is renowned for its diversity of wildlife and many natural areas, yet there are over 200 species in the province whose populations are at risk (Ontario, 2016). The 2015 State of Ontario’s Biodiversity report found that the status of the majority of species at risk in Ontario has declined in recent years (Ontario Biodiversity Council, 2015), making it more important than ever to ensure that the protection provided to these species is adequate to guarantee their existence for generations to come. Although the number and diversity of species at risk increases as you move farther south in the province (Ontario, 2015), a significant proportion of these species are found in Ontario’s northern forests, making the loss and fragmentation of these forests an area of critical concern (Olive, 2014). However, while Ontario’s at-risk species are extremely important to the province and its biodiversity, the forest industry plays a vital role in the province’s economy, providing approximately 12.9 billion dollars to the province in 2013 (Ontario, 2016). It often appears as though species protection and conservation is at odds with forest management and timber harvesting, and there has been much debate between forest industry and environmental organizations regarding whether species at risk in Ontario’s Crown forests are truly being protected. The Ontario Ministry of Natural Resources and Forestry has begun work on the ESA-CFSA Integration Project, which is aimed to resolve these differences and effectively protect species at risk in the province.

2. **BACKGROUND AND PROBLEM DEFINITION**

Ontario’s Crown forests are forests on public land that are found primarily in the Boreal and Great Lakes-St. Lawrence regions of northern and central Ontario and are managed by individuals or companies holding a Sustainable Forest Licence (SFL) or a Forest Resource Licence (FRL) (Canadian Council of Forest Ministers, n.d.). There are two main pieces of legislation that govern the sustainability of Ontario’s Crown forests. The first is the Crown Forest Sustainability Act (CFSA), which has been governing forest operations in Ontario’s Crown forests since 1994 (Ontario, 2016). Through the use of four manuals that are regularly updated (Forest Management Planning Manual, Forest Operations and Silviculture Manual, Scaling Manual, and Forest Information Manual), the CFSA focuses on the landscape level and provides for the sustainability of Crown forests, managing “Crown forests to meet social, economic and environmental needs of present and future generations” (CFSA, 1994, c. 25, s. 1). Under the Forest Management Planning Manual (FMPM), it is required that Areas of Concern (AOCs) are identified that represent the area surrounding a forest value, such as the habitat of a species at risk. These AOCs are assigned specific direction, including an operational prescription, that dictates what actions may or may not be taken within the AOC in order to minimize adverse effects on plant and animal life (Ontario, 2015). There are also a variety of forest management guides that are science-based and produced in consultation with a number of stakeholders, including the Forest Management Guides for Boreal Landscapes and Great Lakes-St. Lawrence Landscapes and the Forest Management Guide for Conserving Biodiversity at the Stand and Site Scales (Ontario, 2015).

The second piece of legislation is Ontario’s Endangered Species Act (ESA), which was originally passed in 2007 with the goal of protecting species at risk (SAR) across the province. The Act was the result of a successful campaign termed “Save Ontario’s Species” (SOS), which was organized by a coalition of several ENGOs (environmental, non-governmental organizations)
in 2005 (Ivey Foundation, 2007). Through this campaign, the coalition worked with Dalton McGuinty, Ontario’s then-Premier, to develop the legislation that became the 2007 ESA. The success of the SOS campaign in passing the ESA was largely due to the political climate during that time, as the government was seeking to redefine itself as reliable and environmentally conscious (Ivey Foundation, 2007). As such, the ESA was hailed as a gold-standard act that was fully supported by many environmental organizations across the country.

Under the supervision of the Ministry of Natural Resources and Forestry (MNRF), the ESA provides automatic protection to endangered and threatened species and their habitat using science-based assessments, and the Act includes tools to reduce human impact on species and their habitat, as well as to encourage the protection and recovery of these species (Ontario, 2015). The overall purpose of the ESA is to identify SAR, protect these at-risk species and their habitats, and promote their recovery (ESA, 2007). One of the main differences between the ESA and the CFSA is the overall benefit requirement under the ESA, which states that proponents of any activity that has the potential to affect SAR, and that is otherwise prohibited under the ESA, must take action to achieve an overall benefit for the species in order to obtain a permit for the activity (Ontario, 2015). This must involve more than simply minimizing adverse effects to the species, which is where the ESA differs from the CFSA in terms of the level of species protection provided. The MNRF is also required to develop recovery strategies for threatened and endangered species, management plans for species of special concern, and a Government Response Statement outlining the steps the government intends to take to achieve the goals set out in the recovery strategies and management plans (MNRF, 2013). A second major difference between the ESA and the CFSA is the single-species approach the ESA takes, in contrast to the landscape-based approach taken under the CFSA.

Although the purpose of the ESA is laudable in terms of maintaining Ontario’s biodiversity, many have argued that the current way in which the ESA is implemented does not achieve this purpose. In July of 2013, the Ontario government significantly weakened its SAR legislation by implementing regulatory amendments to the ESA, the most current version of which is Ontario Regulation 242/08, which created a 5-year exemption to the Act for multiple industries in the province. Prior to these amendments, all activities that had the potential to harmfully impact species at risk required an overall benefit permit issued by the MNRF. Now, however, many activities are exempt from the permit requirement, including mineral exploration, the operation of hydro-electric generating stations, wind farms, and pits and quarries, and forest operations. Instead, proponents of these activities are simply required to register with the Ministry before engaging in the activity, sometimes being required to undertake activities that will minimize adverse effects of the activity on the species and their habitat (Ontario, 2015). Agricultural operations are also exempt from the ESA under O. Reg. 242/08 with respect to bobolink and eastern meadowlark – an exemption which was set to expire in 2015 and has been extended until 2025 (Ontario, 2016). There has been much backlash from the environmental community regarding O. Reg. 242/08, with many organizations claiming that the regulations, specifically the removal of the requirement for an overall benefit, significantly weaken the ESA, allowing harmful activities to proceed without government oversight, thus further endangering the future of many at-risk species (Bell & Plotkin, 2015).
The exemption for forest operations in Crown forests from the ESA (Section 22.1 of O. Reg. 242/08) is currently in place until July of 2018. Under this exemption, instead of following the steps previously required under the ESA to minimize harm to the species, it is required that forest operations be done under a licence issued under the CFSA and follow a Forest Management Plan that includes conditions for habitat features of endangered or threatened species (Ontario3, 2015). If the conditions under the regulatory exemption are met, forest operations may take place in areas where species at risk are found. Crown forest operations were exempted from the ESA in response to negative feedback provided to the MNRF from municipal and industry stakeholders (OMNR, 2013). This exemption period gave the MNRF five years to conduct a policy gap analysis to address the linkages between the CFSA and the ESA.

With the exemption for Crown forest operations expiring in 2018, the MNRF is presently working towards a long-term policy solution that “meets the regulatory requirements of both [the ESA and the CFSA], provides for the protection of species at risk and establishes a climate of certainty for the forest industry” by integrating the two Acts into one streamlined policy framework, which has been termed the “ESA-CFSA Integration Project” (Gignac & Collins, email communication, June 10, 2016). Under this project, the MNRF has developed a compendium of draft species prescription options for species at risk found in Ontario’s Crown forests that have the potential to be affected by forest operations, and potential authorization mechanisms for these prescriptions. The Ministry has also consulted forest industry representatives, ENGOs, and First Nations groups for input to the project.

It is critical that the ESA-CFSA Integration Project be successful and that the ESA is not seen as another instance of failed policy implementation. Given the current political climate, a change in government could result in the removal of the ESA from current legislation, thus eliminating designated protection for over 200 species in Ontario. The MNRF acknowledges that the ESA and the CFSA have different goals: “The CFSA is centered around conserving biodiversity and ecological processes while providing for sustainability (social, economic and environmental) of Crown forests. The ESA’s purpose is to identify and protect species at risk and their habitats, and to promote the recovery of species at risk” (Gignac & Collins, email communication, June 10, 2016). While they share some similarities, the ESA is much more specifically targeted at SAR protection than the CFSA; therefore, any attempt to integrate these two Acts with must be looked at thoroughly. During this transitional period, it is essential to examine the past successes and failures in implementing the ESA since 2007 in order to learn and make better decisions when developing this integrated policy framework. It is also important to critically examine the plans of the Ontario government regarding the ESA-CFSA integration. In doing so, it is possible to develop possible implications of the approaching policy integration and generate suggestions for the future.

Considering the differences between the ESA and the CFSA, as well as the concerns over the implementation of the ESA to date, the research question that must be answered is: How could the ESA-CFSA Integration Project be implemented to best protect species at risk without threatening the forest industry in Ontario? Answering this research question will include examining the short history of implementing the ESA since 2007, stakeholder opinions, and the work the MNRF has accomplished to date for the integration project.
3. **Literature Review – Current State of the Problem**

Habitat loss and degradation is known to be the leading cause of population decline for species at risk in Canada, affecting 84% of all species, and 93% of endangered species (Venter, Brodeur, Nemiroff, Belland, Dolinsek & Grant, 2006). Not only does habitat loss result in species population declines – it has also been found to be the principal factor impeding their recovery (Kerr & Deguise, 2004). Although the primary activities resulting in habitat loss and degradation are agriculture and urban land conversion (Venter et al., 2006), forest harvesting is among the key factors leading to species decline (Otto, 2015). Further, “habitat losses attributable to forestry have figured prominently in the declines of terrestrial mammals and birds” (Hutchings & Festa-Bianchet, 2009, p. 59), and species found in Boreal forests are particularly at risk due to expansive logging activities (Imbeau, Monkkonen & Desrochers, 2001). Another example is the Boreal caribou (*Rangifer tarandus*), a threatened and much publicized species in Ontario whose behavior and spatial distribution has been adversely affected by forestry. Caribou tend to avoid human activity due to higher levels of noise, and thus steer clear of harvesting operations (Vors, Schaefer, Pond, Rodgers & Patterson, 2007). In addition to noise, forest practices have also impacted the caribou food source. Lichens are an important food source for caribou, and because of their association with forest structures, can act as indicators of sustainable forest management (McMullin, Thompson & Newmaster, 2013). McMullin et al. found that “forest practices could be having a long-term effect on caribou habitat quality” (2013, p. 1028) by reducing lichen diversity. The southern boundary of the continuous caribou range in Ontario also closely matches the northern boundary of forest harvesting, suggesting a reduced occurrence of caribou in the area of harvesting operations (Vors et al., 2007).

In addition, forest management plans have been evaluated for certain components of forest sustainability by using certain birds as indicator species within Ontario forests (Venier & Pearce, 2007). Euler (2014) found that forest management in Ontario was not encouraging the conservation of mature and old-growth conifer forests as habitat for several bird species, and was instead reducing the quality of this habitat, resulting in impacts on other wildlife species as well. Imbeau et al. (2001) compared the effects of forestry on bird species in the Boreal forest of Fennoscandia, where forestry is a major threat to species, with the effects of forestry operations in Canada’s Boreal forest and found that the majority of at-risk species in the Boreal “are considered susceptible to logging in the boreal shield region” (p. 1159). The literature suggests that there are links between species declines and forest operations, and therefore this relationship is something that should be critically considered when implementing a policy framework applying the ESA-CFSA Integration Project.

Further, Euler (2014) found that Forest Management Plans (FMPs) in Ontario can vary widely based on the preferred timber harvest constraints of the individual forest management planners, which in turn affects the amount of wildlife habitat conserved under each FMP. It seems as though the draft species prescriptions developed by the MNRF are designed to minimize this variability, and therefore should be critically analyzed by various stakeholders to ensure that the protection provided under the ESA-CFSA Integration Project is consistent with the level of species and habitat protection specified under the ESA.
There are also concerns that the implementation of environmental policy in general in Ontario has been less than satisfactory. In a report from the Environmental Commissioner of Ontario (ECO), it is stated that the MNRF has delayed the development of recovery strategies for nearly half of the province’s endangered and threatened species, thereby also delaying government response statements and the establishment of habitat regulations for these species (ECO, 2013). Furthermore, the ECO argued that the province is unable to reliably state whether its regulation of forest operations is adequately protecting species at risk, and is therefore incapable of knowing what impact forest operations are having on these species (ECO, 2013). Another example of unsatisfactory policy implementation is the Provincial Wildlife Population Monitoring Program (PWPMP) which, as a condition of the CFSA, would “monitor population trends of representative terrestrial vertebrate species within the Area of the Undertaking of commercial timber harvesting (AOU), in order to understand the effects of forestry on wildlife at the provincial level” (O’Malley, Wilkinson & Miller, 2013, p. 125). The results of the PWPMP were to be used to inform policy and management decisions, but the province has failed to monitor forest wildlife population trends for almost two decades due to a lack of funding and capacity at the MNRF (O’Malley et al., 2013). These examples suggest that the MNRF has a history of not giving policy aimed at environmental sustainability due consideration. With the ESA-CFSA integration policy framework currently being developed, it is of the utmost importance that the past implementation of the ESA and CFSA is researched so that this information can be utilized in deciding protection for SAR affected by forest operations in the future.

While there is evidence to suggest that forest management in Ontario is not effectively protecting Ontario’s species at risk, there are also those who advocate for the CFSA as a means of protecting species. The goal of the CFSA is to utilize sustainable forest management, and was legislated in response to societal pressure to move beyond managing forests simply for sustained timber yields and towards a more holistic approach that balances multiple uses and values (Robson & Davis, 2015). Although Crown forest operations have been exempt from the ESA, it has been argued that this does not necessarily mean that forest managers are not taking adequate provisions to protect SAR in these forests. Tony Bull of the Canadian Institute of Forestry (CIF) Ottawa Valley Section has stated that “the existing instruments of sustainability on Crown land can be safely said to fully meet ESA objectives for species at risk conservation” (Bull, 2013, p. 286). Therefore, Bull argues that applying the ESA on Crown lands in addition to the CFSA is not necessary, and is costlier for both forest industry as well as taxpayers (Bull, 2013).

In terms of specific species at risk, forest industry and the MNRF maintain that they are already committed to protecting species at risk through Ontario’s Crown forest management practices. Armstrong, Gluck, Hooper, Mettam, Racey and Rondeau (2010) argue that the Caribou Conservation Plan, which represents the government’s legally required action plan for caribou under the ESA, signifies a strong policy commitment to the conservation and recovery of caribou populations in Ontario through a variety of planning and stewardship initiatives. Further, the 2012 State of Ontario’s Forests report states that the conservation status for the vast majority of SAR has stayed the same since 2005, with an additional 67 species removed from the at-risk list and 13 species down-listed, showing an improving conservation trend (OMNR, 2012). The Five-Year EA Report on Forest Management does not dispute this trend, stating that there were no drastic changes in species decline observed in Ontario’s Boreal forest (OMNR, 2013). However, there is a lack of science-based literature specifically relating to the ability of the CFSA to protect SAR in Ontario,
and the Ministry of Finance has found that the forest auditors’ methods used to assess various aspects of forest sustainability were inconsistent with the definition of sustainability in the CFSA (2011). Although it seems as though the argument against the CFSA and in support of the ESA as a means of species protection, is more prevalent and well-researched, there is still a need for a critical evaluation of this aspect of the CFSA in order to make an informed decision in terms of what is necessary under the ESA-CFSA Integration Project.

4. METHODS AND APPROACH

This study aims to understand how the ESA-CFSA Integration Project could be implemented to best protect species at risk without threatening the forest industry in Ontario. The short-term objectives are to: 1) evaluate the implementation to date of the ESA in Ontario, and 2) assess the work accomplished by the MNRF to date with respect to the Integration Project. By evaluating the implementation of the ESA, policy decision-makers, specifically those involved in the Integration Project, will better understand what works well and what does not in terms of policy design and implementation. With the ESA-CFSA Integration Project scheduled for completion in 2018, there is an urgent need for this assessment.

The long-term objectives are to: 1) determine possible implications for the ESA-CFSA Integration Project following the expiry of the exemption for operations in Crown forests in 2018, 2) contribute to the development of the integrated policy framework for species at risk affected by forest operations in Crown forests, and 3) contribute to a more thorough understanding of the successes and failures of conservation and sustainability policy in Ontario. The findings and implications resulting from this study may be utilized by policy decision makers at the provincial level, thus potentially contributing to the ESA-CFSA Integration Project policy framework and, more broadly, to the discourse surrounding policy in Ontario.

This research was informed by a volunteer placement with the David Suzuki Foundation in the summer of 2016. As part of the placement, the researcher of this study was invited to a formal meeting between the MNRF and ENGOs to observe the discussion surrounding the ESA-CFSA Integration Project. Following the meeting, a draft compendium of species prescriptions was provided to the ENGOs by the MNRF and was analyzed by the researcher. This analysis contributed to the research used by ENGOs to develop comments in response to the prescriptions which are used in this study’s findings.

The methodology for this study follows an embedded single-case study approach. A case study “investigates a contemporary phenomenon...in depth and within real-world context” and “relies on multiple sources of evidence, with data needing to converge in a triangulating fashion” (Yin, 2014, p. 16-17). A case study approach was suitable to answer the research question posed for this study as the current problems facing the ESA-CFSA Integration Project are very complex and multi-faceted. For problems such as this, Patton and Sawicki recommend the use of multiple analytical approaches (2002), and one strength of the case study approach is its ability to manage a variety of types of evidence, including documents, interviews, and observations (Yin, 2014). Under an embedded single-case study, subunits of analysis may be incorporated into a single-case study to develop an embedded design, which “can often add significant opportunities for extensive analysis, enhancing the insights into the single case” (Yin, 2014, p. 56). An embedded single-case
approach is suitable for this study as it aims to evaluate two separate provincial policies with the overarching goal of determining the best method of integrating the legislation into one policy framework.

Both the implementation of the ESA in Crown forests and the work on the ESA-CFA Integration Project that the MNRF has accomplished to date were evaluated using a variety of case study evidence, including a literature review, documentation, personal communication, and direct observation. A comprehensive literature review was completed to gather information regarding the implementation of and level of protection afforded by the Act, in combination with documentation such as emails and formal written evaluations relating to the Act. The use of communication with professionals in various fields representing both the ENGO and forest industry, as well as direct observation of the integration project meeting between ENGOs and the MNRF, contributed to a greater understanding of the issues. The main informants, whose anonymity is protected, are listed in Appendix A. In order to increase confidence in the interpretation of the findings of these various forms of evidence, a methodological triangulation strategy was employed, which involves combining multiple data collection methods to ensure that the research results are adequate and accurate, and has been proven to act as a powerful tool in qualitative research design (Holtzhausen, 2001).

5. FINDINGS

The findings from this research can be grouped into two broad categories: 1) the level of success achieved by the implementation of the Endangered Species Act, and 2) the work that has been accomplished by the MNRF for the ESA-CFSA Integration Project to date.

5.1 IMPLEMENTATION OF THE ESA TO DATE

Many stakeholders affected by the ESA express concern over the ineffectiveness of the Act, albeit with very different reasoning. Two of the primary ENGOs involved with issues concerning forestry and SAR in Ontario are Ontario Nature and the David Suzuki Foundation, both of which have concerns over the way the ESA has been implemented. While these organizations acknowledge that the protection and recovery of SAR has improved since the Act’s implementation in 2007, they argue that the situation has not improved as much as they had hoped (E1). They credit this largely to the regulatory exemptions put into place in 2013, which have been called “disastrous, [with] the forestry exemption being the primary example” (E1). ENGOs have also noted that a significant problem with the implementation of the ESA is the delay in preparing legally required recovery strategies for SAR (Bowman, email communication, August 23, 2016).

Members of the forest industry in Ontario recognize the importance of protecting SAR in the province, but argue that the ESA has had a detrimental impact on economic development and productivity associated with forestry practices, and express two major concerns with respect to the implementation of the ESA. The first main concern of forest industry is that the ESA itself is unnecessary in Crown forests, since “the mandatory protection of species at risk and their habitat has been part of Forest Management Plans under the Crown Forest Sustainability Act for nearly 20 years” (Nelson, 2013). This concern has been communicated by various groups and individuals working in Ontario’s forest industry, including the Northwestern Ontario Municipal Association.
(Nelson, 2013), the County of Renfrew (County of Renfrew, 2014), and various forest industry companies (F1; F2; F4). Although forest operations on Crown land are conditionally exempt from the ESA, proponents are still required to follow the CFSA, which does not allow variance from the AOC prescriptions for SAR in the Stand and Site Guide (F1). Therefore, it has been argued that the “duplicative processes [under the ESA] that achieve the same outcome” (Nelson, 2013) as the CFSA contribute to stifled economic development through long delays for proponents of forestry activities and significant expenses to businesses and industry (County of Renfrew, 2014).

The second main concern of the forest industry is the restrictive AOC direction provided through the CFSA that is compounded by what they argue is a seeming lack of scientific research confirming the detrimental effect of forest practices on SAR habitat destruction. Industry representatives have argued that the current AOCs are too large, thereby reducing the productive land base and negatively impacting the forest industry (F1; County of Renfrew, 2014). They claim that the MNRF relies too heavily on the precautionary principle when designating AOCs, basing habitat protection guidelines on “little or no scientific evidence or data” (Eastern Ontario Model Forest, 2012, p. 5), when there are many studies that “rank Ontario as a global/national leader in sustainable forest management” (Jackson, 2015, p. 8). The OFIA goes as far as to challenge the threatened listing of Boreal caribou under the Species at Risk in Ontario List, stating that the species is provincially abundant and that populations appear to be stronger in areas where forest operations are taking place, citing the MNRF’s methods for counting caribou and measuring the availability of the species’ habitat as incorrect (OFIA, n.d.).

Both stakeholder groups agree that the protection of SAR is important, and that the ESA has not been implemented successfully (Appendix 1). However, there is disagreement over the reasoning behind its unsuccessful implementation, which has resulted in a division of opinion. The view that “certain ENGO efforts are focusing on environmental values at the expense of social and economic interests” was presented at the 2015 CIF Conference in Kenora (Jackson, 2015, p. 9). Further, the concern has been raised that certain ENGO campaigns contribute to a lack of knowledge regarding actual forestry practices in the majority of Ontarians, instead using anti-logging messaging to portray forest industry in a poor light (Jackson, 2015). Nevertheless, the concern has also been expressed that it is of the utmost importance to effectively resolve these issues in order to make the ESA work for the province, or there is the political risk that the Act could be abolished completely in the future (F3).

5.2 WORK ACCOMPLISHED FOR ESA-CFSA INTEGRATION PROJECT

With the regulatory exemption for Crown forest operations having been enacted in 2013, the MNRF has now had three years to develop a policy solution that links the ESA and the CFSA. In 2015, the MNRF released their annual plans and reports, within which they stated that one of their key priorities was to “develop an integrated and efficient framework for forest management planning that meets the requirements of both the Endangered Species Act and Crown Forest Sustainability Act” (MNRF, 2015). On June 13 2016, a proposal from the MNRF was added to the Ontario Environmental Registry detailing proposed revisions to Ontario’s forest planning manuals. One of the matters which the proposed revisions aimed to address is the ESA-CFSA Integration Project, emphasizing that the MNRF is continuing to explore different options to integrate the two Acts. In a publicly available document detailing the proposed revisions to the various manuals, the MNRF stated that they are “considering how to integrate the legislative,
policy and regulatory requirements of the ESA into the forest management planning process, which is regulated under the CFSA” (MNRF, 2016, p.4). One of the current options being explored is enabling approved FMPs to have the same effect as overall benefit permits through the use of Section 18 of the ESA, which allows for an ‘instrument’ (such as a forest management plan) to take the place of a required permit. The public was invited to comment on the Environmental Registry proposal, with the MNRF stating that all comments received would be used as part of their decision-making process.

In order to further explore the Section 18 integration option, the MNRF held separate meetings with various stakeholder groups, including forest industry companies, ENGOs ¹, municipalities, and First Nations in July 2016. During these meetings, the MNRF sought to provide stakeholders with a progress update on their ESA-CFSA integration efforts as they work towards the 2018 expiration date of the exemption for forest operations (Gignac, email communication, June 10, 2016). During the meeting with ENGOs, the MNRF stated that while they had already completed an assessment of the social, economic, and environmental effects of the ESA and forestry direction, they were still in the process of reviewing ESA and CFSA policy using a risk-based approach, investigating available options to enable integration, and incorporating the ESA and CFSA into a single policy framework (G4). The meetings gave stakeholders an opportunity to voice their opinions and concerns regarding both policies to the MNRF.

Critical to the work the MNRF has accomplished to date is developing draft species prescription options for SAR in Crown forests, a compendium of which was shared with those stakeholder representatives who attended the meetings and is in confidential circulation. During the meetings, the MNRF discussed the steps they had taken to develop these draft prescription options, and explained that each prescription included Standards and Guidelines, both of which are mandatory direction, as well as Best Management Practices, which are optional (MNRF, Presentation, July 6 2016). As of September 30, 2016, a coalition of several ENGOs submitted comments on the draft contents of the ESA-CFSA Integration Project to the MNRF². One of the main ENGO concerns outlined within these comments is unequal representation. They argue that there is an unfair partiality towards the economic and social concerns of the forest industry that are being put ahead of the ENGO concern for species protection and recovery, noting that they “have serious concerns about the direction of the [CFSA-ESA] integration project, and specifically whether it will meet or is even intended to meet the objectives and standards set out in the ESA for the protection and recovery of species at risk” (Plotkin et al., 2016). This is an issue that was also raised at the ENGO meeting with the MNRF, with one participant disapproving of the MNRF’s goal to achieve a climate of certainty for the forest industry when instead they should be focused on achieving certainty for SAR populations (E2). They also note several areas for improvement within the draft compendium of species prescriptions, as outlined in Appendix C.

A number of forest industry organizations and companies have also reviewed the draft contents of the ESA-CFSA Integration Project and while the concerns of forest industry are largely

¹ It should be noted that the researcher of this study attended the meeting between the MNRF and various ENGOs as a volunteer representative, and as such, any direct observations are based on this meeting and are not necessarily representative of meetings between the MNRF and other stakeholders. Further, while the researcher has reviewed the draft species prescriptions, no confidential information will be shared in this report.

² These comments were prepared in part by the researcher of this study.
the same across the board, their recommendations vary from person to person. While it seems the majority of forest industry representatives in Ontario agree that the CFSA is more effective for SAR protection than the ESA, there are differing opinions on how best to implement the integration project. The Ontario Forest Industry Association (OFIA) is in total opposition to the Section 18 integration option, preferring an extension of the current exemption for Crown forest operations (F2, F3), as has been done for agricultural operations. Still, others working within the forest industry are more open to integration. Some recommendations from forest industry representatives for the integration project are shown in Appendix D.

Further, a general comparison of the perspectives of ENGOs and forest industry that are generally agreed upon by the individuals within each stakeholder group are outlined in Appendix E.

6. DISCUSSION AND RECOMMENDATIONS

This research aimed to answer how the ESA-CFSA Integration Project could be implemented to best protect species at risk without threatening the forest industry in Ontario. To accomplish this, it was necessary to examine both the implementation of the ESA to date, and the work the MNRF has accomplished so far on the ESA-CFSA Integration Project. One of the main findings of this research is the confirmation that the ENGOs and forest industry agree that the implementation of the ESA has been unsuccessful. ENGOs feel that the ESA is too weak and has not accomplished enough in terms of SAR protection; conversely, forest industry argues that the ESA is overly strong and restrictive. Further, the forest industry maintains that the CFSA is a more effective method of protecting SAR than is the ESA, for Crown forests. This finding supports the divergence of opinion between ENGOs and industry that is found in the literature.

Although the differences in stakeholder opinion regarding how to best protect and recover SAR in Ontario’s Crown forests are problematic and a cause of conflict, it seems the MNRF is making small positive strides to resolve these issues. By setting up meetings with various stakeholders, who are both directly and indirectly involved with the ESA and/or the CFSA, the MNRF is better able to understand the varying viewpoints and hopefully incorporate them into a new policy strategy moving forward with the integration project. Further, the MNRF has displayed a commitment to finding a solution to the exemption for Crown forest operations prior to its expiry date in July 2018, which has not been the case in previous situations related to the ESA, such as the aforementioned delay in preparing SAR recovery strategies. However, while positive strides are being made, there is still the possibility that the MNRF will decide to extend the current exemption for Crown forest operations, since this has been done recently for agricultural operations; this would not be a progressive solution to the issue and would only result in increased opposition between stakeholders.

In terms of stakeholder opinions on the progress thus far on the ESA-CFSA Integration Project, it was found that while there is disagreement between ENGOs and forest industry, there are also overarching concerns that are held by both groups. However, rather than collaborating to address the protection of SAR and the ineffectiveness of the ESA’s implementation, which both parties agree on, the stark differences in the underlying concerns held by ENGOs and forest industry has resulted in antagonism between these stakeholders. Differing opinion is common when it comes to stakeholder relations, especially concerning forestry, and has been in existence
for some time in Ontario. In 1998, a group of researchers surveyed industry foresters, government foresters, and government biologists in Ontario to develop a sense of each group’s environmental values and forest management goals, finding that all three groups had differing opinions which revealed potential sources of conflict, as well as problems in communication between the groups (Wagner, Flynn, Gregory, Mertz & Slovic, 1998). Therefore, while not unusual, with both groups of principal stakeholders affected by the ESA-CFSA Integration Project in opposition, it becomes increasingly difficult to make any progress on its implementation or improvement.

With various ENGOs feeling strongly about the lack of progress in SAR protection and recovery under the implementation of the ESA and having identified several areas of concern in the progress under the ESA-CFSA Integration Project, there is the possibility that ENGOs will become more politicized and begin a new campaign reminiscent of the Save Ontario’s Species (SOS) campaign that resulted in the passage of the ESA in 2007. While ENGOs were satisfied with the success of the SOS campaign, it could be argued that the campaign had unintended consequences and was not truly successful over the long term. Although the campaign achieved its goal of passing a strong endangered species legislation, the Act was weakened in the years following its initial implementation due to criticism from other stakeholders who had not been involved in the planning process, setting up the conflict between ENGOs and forest industry that this study has found. If there were to be a new ENGO campaign that was effective in changing the ESA-CFSA Integration Project draft species prescriptions in the way that ENGOs are recommending, without fully considering the concerns of other stakeholders, it is possible that the integration project would experience similar criticism as the ESA has experienced from forest industry. Repeating the same approach may not be successful in protecting and recovering SAR in Crown forests over the long term.

While the positive strides demonstrated by the MNRF are essential to the success of the integration project, including meeting with stakeholders and acting before the date of the exemption expiry, the root of the conflict still remains unaddressed: the lack of collaboration between stakeholders concerning SAR protection and forest operations. While conflict between these stakeholder groups exists, if a creative solution to this conflict that achieves the protection of SAR without threatening the viability of the forest industry in Ontario is not developed, there is the risk that progress on the integration project may remain at an impasse. It is, therefore, essential that the ESA-CFSA Integration Project is resolved in a manner that satisfies both ENGOs and forest industry, or the province risks the possibility of complete termination of the level of species protection afforded by the ESA. The previous success of the SOS campaign was due largely to the political climate at the time, and it is possible that with a shifting political climate in the future, the ESA may be eliminated if it is decided that despite various attempts, its successful implementation is impossible.

Considering the urgent need for a successful ESA-CFSA Integration Project, there are several recommendations that can be made. First, although the MNRF is meeting individually with stakeholders, including forest industry and ENGOs, there is no forum available for these stakeholders to meet with each other and discuss the issues at hand. It is, therefore, recommended that the MNRF provide the opportunity for a public roundtable discussion with members from both ENGOs and forest industry where each stakeholder can develop a better understanding of the other’s concerns through open discussion. This could also be improved upon by including other
stakeholders in the discussion, such as First Nations. Essential to the success of these roundtable discussions would be ensuring that only progressive forest industry companies and ENGOs who are open to the integration of the ESA and the CFSA are present at these meetings. This would help to facilitate meaningful conversation and discussion of the issues at hand, and increase the probability of collaboration between stakeholders.

Second, there is need for further scientific research to be conducted to assist in developing a policy solution that is as effective as possible. There continues to be disagreement between ENGOs and forest industry regarding the size of AOCs and their effective prescriptions, yet there are no publicly available studies that compare the effects of AOC sizes and prescriptions on SAR populations. Therefore, further comparative research must be conducted that examines the effectiveness of varying sizes and prescriptions of AOCs in Crown forests in protecting and recovering SAR that includes an option accounting for SAR habitat regulations and descriptions. This will help to ensure that the policy solution to the ESA-CFSA integration is informed by science and, therefore, effective and more acceptable to both stakeholder groups.

Lastly, while forest industry maintains that CFSA processes are robust and science-based, ENGOs voice the concern that the protection afforded to SAR within FMPs under the CFSA is highly variable. To address these concerns, it is recommended that forest managers for each management unit on Crown land are surveyed to determine the practices that are in place to protect SAR under their respective FMPs. This will assist the MNRF in determining the amount of variability in SAR habitat management guidance. Further, in terms of policy direction under the ESA-CFSA Integration Project, the MNRF should consider the possibility of necessitating the approval of FMPs by the Species Conservation policy branch of the MNRF to ensure that guidance under the FMP is meeting overall benefit or minimizing adverse effects requirements as outlined under the ESA. Currently, FMPs are approved by the Minister of Natural Resources and Forestry, but adding this extra level of assessment would help to ensure ENGOs that there is a level of accountability for species, while also appeasing forest industry in streamlining the SAR protection process.

7. CONCLUSIONS

This study has investigated the implementation of the ESA in Ontario since 2007, as well as the work the MNRF has accomplished to date in developing a policy framework integrating the ESA and CFSA. Opinions, arguments, and perspectives of both ENGOs and forest industry were examined. It was concluded that although the viewpoints of these two stakeholders are conflicting, common ground does exist, and it is from those shared concerns that the ESA-CFSA Integration Project must stem.

The knowledge gained from this study could have practical implications for the ESA-CFSA Integration Project currently being undertaken by the MNRF, and as such, several recommendations were made in regards to the future of the integration project. These include providing a roundtable discussion for all stakeholders, conducting further scientific research on AOC prescriptions and forest management plans, surveying forest managers to determine species at risk protection measures in place under forest management plans, and considering the possibility of required approval of forest management plans by the Species Conservation branch of the
MNRF. It is anticipated that the results of this study will also provide an opportunity for the MNRF to learn from past policy implementation successes and failures so that this can be considered in the development and application stages of the ESA-CFSA integrated policy framework. Overall, it is expected that the findings of this study will be applicable to the development and implementation of the ESA-CFSA policy framework and may influence the choices of decision makers to ensure that species at risk are receiving the best possible protection while still maintaining a viable forest industry in the province.

8. **Possible Extension of the Work**

There were several approaches to tackling this issue that were examined but were deemed to not be possible within the scope of this study. Obvious stakeholders that are affected by the ESA-CFSA integration on Ontario Crown forested land are First Nations groups and municipalities. Unfortunately, the viewpoints of these stakeholders and their interests in forestry and species at risk are not represented in this study due to timing restrictions on the research. Therefore, it is highly recommended that future research on this topic considers the First Nations and municipal perspective, since it is impossible to make effective decisions without representing all stakeholders in an issue.

Further, it would have been beneficial to receive input from a larger number of representatives of ENGOs, forest industry, and the Ontario government. Numerous individuals (30) were contacted but only a small portion responded (8) and were willing to provide information. In future studies, it is recommended that information be collected from more informants.

Due to the scope of the study, it was not possible to research the economic impacts of the ESA-CFSA Integration Project. A cost-benefit analysis would have been a valuable aspect of the research, but regrettably was not able to be included, and is therefore recommended as an area of future research.

Lastly, it would have been beneficial to examine species at risk population trends and evaluate the progress made by the Ontario government towards protecting and recovering these species in order to draw more accurate conclusions regarding the implementation of the ESA to date. It was hoped that the Five-Year Review of Progress reports released by the MNRF could be used to achieve this goal, but at the time of writing, only one progress report was available that reviewed 13 species at risk. The 2016 reports for a further 27 species were tracking towards publication in December (G1), and therefore were not available for the writing of this report. Evaluating the progress of only 13 species was not considered to be a large enough sample size, and so this aspect of the research was not completed. Future research on this topic would benefit from a detailed analysis of these SAR progress reports.
ACKNOWLEDGEMENTS

I would like to thank Anne Koven for all of her support as my supervisor for this research project. I would also like to thank Rachel Plotkin and Faisal Moola at the David Suzuki Foundation, as well as the rest of the DSF team, for taking on a summer research student volunteer and introducing me to the ESA-CFSA Integration Project. I am grateful for the information and guidance provided by the individuals working for various ENGOs and forest management companies, as well as the MNRF, who provided information for my research. Further, I would like to acknowledge the University of Toronto Faculty of Forestry for providing me with the knowledge base necessary to complete this research. Special thanks to Nick D’Andrea for all of his support throughout the completion of this project.
LITERATURE CITED


APPENDIX A: MAIN RESEARCH INFORMANTS

<table>
<thead>
<tr>
<th>Category</th>
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<td>E2</td>
<td>ENGO</td>
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<tr>
<td></td>
<td>F3</td>
<td>Consultant</td>
<td>Ecologist</td>
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<tr>
<td></td>
<td>F4</td>
<td>Industry</td>
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<td>Government</td>
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<td>Policy Advisor</td>
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<td></td>
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<td>OMNRF</td>
<td>Coordinator</td>
<td>June 20 2016</td>
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<td></td>
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<td>G4</td>
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APPENDIX B: OVERVIEW OF ENGO AND INDUSTRY POSITIONS ON ESA

<table>
<thead>
<tr>
<th>Position</th>
<th>Protection of SAR is important</th>
<th>Implementation of the ESA has not been successful</th>
<th>ESA is unnecessary and duplicative</th>
<th>ESA is not doing enough to protect species</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stakeholder</td>
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<tr>
<td>ENGOs</td>
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<tr>
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APPENDIX C: ENGO RECOMMENDATIONS FOR INTEGRATION PROJECT

<table>
<thead>
<tr>
<th>ENGO Concern</th>
<th>Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seeming precedence of CFSA over ESA</td>
<td>“…Ensure that the purpose, intent and standards of the ESA are upheld through the proposed integration.”</td>
</tr>
<tr>
<td>Too much flexibility in the wording of species prescriptions</td>
<td>“Ensure that authorizations for any forestry activity that would otherwise be prohibited…meet the requirements set out in sections 17.2(c) and 18 of the ESA, including the achievement of overall benefit.”</td>
</tr>
<tr>
<td>Focus on minimizing adverse effects instead of avoiding harm</td>
<td>Provide clear direction to achieve actual avoidance and “ensure that the achievement of overall benefit to the species is the explicit objective of all prescription”</td>
</tr>
<tr>
<td>Failure to set a sufficient standard for overall benefit</td>
<td>“Ensure all prescriptions are designed to achieve overall benefit…Minimizing adverse effects can contribute to that objective, but must not be presented as a separate and less exacting standard.”</td>
</tr>
<tr>
<td>Small AOCs insufficient to protect habitat</td>
<td>“Ensure that AOCs are defined and activities are prescribed in a manner that is consistent with the legal definitions and requirements of the ESA regarding habitat.”</td>
</tr>
</tbody>
</table>

APPENDIX D: INDUSTRY RECOMMENDATIONS FOR INTEGRATION PROJECT

<table>
<thead>
<tr>
<th>Industry Concern</th>
<th>Recommendation</th>
</tr>
</thead>
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<tr>
<td>Seeming precedence of ESA over CFSA</td>
<td>“I would recommend that the FMP be the mechanism for implementing the ESA on Crown lands. The FMP should undergo an evaluation to meet one of the ESA permits: I.e. Overall benefit or Minimize Adverse Effects … This would avoid having to issue [an] individual permit for each species being protected through the FMP process.” (F4) “Recognize the robust, science-based CFSA processes.” (F1)</td>
</tr>
<tr>
<td>Failure to recognize real threats to SAR</td>
<td>Recognize that “the real risk to species is the highway and the poacher, in many cases. Not the forest operation … Increased focus on real risk factors would likely have a more measurable positive effect on the prospects of SARs.” (F1)</td>
</tr>
<tr>
<td>Small-scale scope of ESA</td>
<td>Recognize that the “CFSA considers balanced, long-term, forest-level objectives … recognize that habitat changes over time, and the benefits of management actions intended to sustain habitat.” (F1)</td>
</tr>
</tbody>
</table>

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3 The information provided in this table has been adapted from the feedback letter sent to the MNRF by Plotkin et al. on September 30, 2016.
### APPENDIX E: ENGO AND FOREST INDUSTRY OPINIONS ON ESA AND CFSA

<table>
<thead>
<tr>
<th></th>
<th>ENGO</th>
<th>Forest Industry</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ESA</strong></td>
<td>The <strong>ESA is necessary</strong> to prevent the further decline and/or extinction of SAR, which are already in a precarious state of survival (Plotkin et al., 2016)</td>
<td>Through large areas reserved from access and/or harvesting, timing restrictions for operations, and increased costs to the SFL (F1, F4), “…the <strong>ESA has had an extremely negative impact on forest operations</strong> on Crown land” (F1)</td>
</tr>
<tr>
<td></td>
<td>“Many of the <strong>AOCs are more limited in scope and cover a smaller area than the habitat regulation</strong> for the species, which is legally defined” (Plotkin et al., 2016)</td>
<td><strong>AOCs are too large and restrictive</strong> (F1, F2, F4)</td>
</tr>
<tr>
<td><strong>CFSA</strong></td>
<td>“…the <strong>CFSA is not geared to species recovery</strong>; it neither prioritizes this goal nor includes any requirements to that end.” (Plotkin et al., 2016)</td>
<td><strong>CFSA is on par with or better than the ESA in terms of species and habitat protection</strong> (F1, F2, F4)</td>
</tr>
<tr>
<td></td>
<td>“<strong>Under the CFSA, Forest Management Plans deliver highly variable management guidance</strong> for habitat protection, offering precious little in terms of protection in some cases.” (Plotkin et al., 2016)</td>
<td><strong>CFSA processes are robust and science-based</strong> (F1)</td>
</tr>
<tr>
<td></td>
<td><strong>SAR habitat must be prescribed on a species-by-species basis</strong>, as is done in the ESA, to effectively protect these species (Plotkin et al., 2016)</td>
<td><strong>Landscape-level species protection in CFSA is more effective</strong> than individual species based protection in ESA (F1, F4)</td>
</tr>
<tr>
<td></td>
<td>Mitigation and minimizing adverse effects to a species is not sufficient for SAR recovery; <strong>must instead achieve overall benefit</strong> (Plotkin et al., 2016)</td>
<td>Logging does not need to be restricted to protect SAR – <strong>mitigative measures can be applied</strong> instead (F2)</td>
</tr>
</tbody>
</table>