



10th Year Review of Ontario's Endangered Species Act: **Discussion Paper**

**Protecting and Recovering
Species at Risk in Ontario**

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PROTECTING AND RECOVERING SPECIES AT RISK IN ONTARIO

Protecting and recovering our province's species at risk is part of the Ministry of the Environment, Conservation and Parks' made-in-Ontario environment plan, "Preserving and Protecting our Environment for Future Generations," launched in November 2018. The Ontario environment plan will protect our air, land and water, prevent and reduce litter and waste, support Ontarians to continue to do their share to reduce greenhouse gas emissions, and help communities and families prepare for climate change.

Ontarians are fortunate to live in a province that is filled with clean air, land and water, valuable resources, and an incredible diversity of more than 30,000 species of plants, insects, fish and wildlife. These species and their habitats are found in forests, rivers, lakes, wetlands, grasslands, and other important ecosystems that make up Ontario's rich biodiversity. While many of these species have stable populations, 243 are listed on the [Species at Risk in Ontario List](#) due to threats such as habitat loss, pollution, invasive species, climate change

and disease. Species that are at risk include birds, fish, mussels, mammals, amphibians, reptiles, plants and insects, and they occur across Ontario from the southern tip near Point Pelee to the northern edge near Fort Severn. As of January 2019, Ontario has developed and put in place 140 recovery strategies for species at risk in the province.

The [Endangered Species Act, 2007](#) (Endangered Species Act) came into effect on June 30, 2008. Species that are listed as 'endangered' or 'threatened' are protected from being harmed, harassed or killed, and their habitats are protected from being damaged or destroyed. Avoiding impacts to species at risk and their habitat is an integral part of protection and recovery. Where activities may have impacts that cannot be avoided, an authorization or compliance with a regulatory provision (which in some cases requires registration with the ministry) can allow those activities to occur under certain conditions (e.g. creating and following a mitigation plan).

Both scientific and implementation-focused expertise are essential to informing the protection and recovery of species at risk in Ontario. The Minister of Environment, Conservation and Parks has two committees that provide the Minister and government with this expertise and advice: the [Committee on the Status of Species at Risk in Ontario \(COSSARO\)](#) and the [Species at Risk Program Advisory Committee \(SARPAC\)](#). COSSARO is an independent committee with up to 12 experts that use best available scientific and Traditional Ecological Knowledge to assess native plants or animals that may be at risk, and to provide a classification. SARPAC is an advisory committee with up to 12 representatives from conservation and business groups from

across the province as well as from Indigenous communities. SARPAC provides advice to the Minister on species at risk matters including species at risk policies, best management practices and stewardship and recovery approaches under the Act to promote sustainable social and economic activities that assist in the protection and recovery of species.

The government is committed to ensuring that the Endangered Species Act provides stringent protections for species at risk, continuing to work with stakeholders and Indigenous peoples to improve its effectiveness, and modernizing the program based on best practices in other jurisdictions. During the past decade of implementing the Endangered Species Act, we have heard what works well and what could work better – for species at risk, conservation groups, the public, Indigenous peoples and economic development. It is clear that while the Act has brought many successes, there are also challenges and possible areas for improvement. Since coming into effect, the Act has been criticized for being ineffective in its aim to protect and recover species at risk, for being unclear, administratively burdensome, time consuming and costly for applicants, and for creating barriers to economic development.

In recognition of these challenges, the Ontario government is currently undertaking a review of the Endangered Species Act to improve protections for species at risk, consider modern and innovative approaches to achieve positive outcomes for species at risk, as well as to look for ways to streamline approvals and provide clarity to support economic development.

The desired outcomes of any proposed changes to the Endangered Species Act are to:

- Enable positive outcomes for species at risk
- Ensure species assessments are based on up-to-date science
- Address multiple objectives for ecosystem management through stewardship and protection activities
- Increase efficiencies in service delivery for authorization clients
- Streamline processes and provide clarity for those who need to implement the Act
- Maintain an effective government oversight role

To inform the review of the Endangered Species Act, the government wants to hear your comments and suggestions about how the Act can enable positive outcomes for species at risk, consider modern and innovative approaches to achieve these outcomes as well as consider ways to streamline and provide clarity for those who need to implement the Act. All comments received during the consultation period will be considered in the review of the Act. In the next section, key challenges and discussion questions are outlined under four areas of focus.

10TH YEAR REVIEW OF THE ENDANGERED SPECIES ACT

AREA OF FOCUS 1 – LANDSCAPE APPROACHES

The Endangered Species Act sets requirements that must be met for each species that is listed as endangered or threatened. Landscape approaches may provide new tools for managing species at risk within specific geographic areas or ecosystems where the needs of multiple species at risk can be addressed.

To learn more: [Species at risk.](#)

CHALLENGES	DISCUSSION QUESTIONS
<ul style="list-style-type: none">• The case-by-case and species-specific policy approach to implementing the Endangered Species Act can sometimes limit the ability to achieve positive outcomes for species at risk. More broadly, protection and recovery approaches for individual species can limit or conflict with one another. For certain species or habitats, the ability to take a more strategic approach may be preferred.• For species that depend on habitat across wide ranges, a landscape approach that enables planning and authorizing activities at a broad scale may be preferred.	<ul style="list-style-type: none">• In what circumstances would a more strategic approach support a proposed activity while also ensuring or improving outcomes for species at risk? (e.g., by using a landscape approach instead of a case-by-case approach, which tends to be species and/or site-specific.)• Are there existing tools or processes that support managing for species risk at a landscape scale that could be recognized under the Endangered Species Act?

AREA OF FOCUS 2 – LISTING PROCESS AND PROTECTIONS FOR SPECIES AT RISK

The Endangered Species Act provides science-based assessments of native plants or animals by an independent committee of experts called the Committee on the Status of Species at Risk in Ontario (COSSARO). Species that are assessed by COSSARO as being extirpated, endangered, threatened or special concern are then classified as such on the Species at Risk in Ontario List. The Endangered Species Act provides automatic species and habitat protections for species that are listed as endangered or threatened.

To learn more: [How species at risk are listed](#) and [How species at risk are protected](#)

CHALLENGES

- There is not enough public notice before a new species is automatically listed on the Species at Risk in Ontario List.
- In some cases, automatic species and habitat protections can contribute to high uncertainty and costly impacts to businesses and the public.
- In some cases, the information around the assessment and classification of a species as threatened or endangered by the independent Committee on the Status of Species at Risk in Ontario is not transparent enough.

DISCUSSION QUESTIONS

- What changes would improve the notification process of a new species being listed on the Species at Risk in Ontario List? (e.g., longer timelines before a species is listed.)
- Should there be a different approach or alternative to automatic species and habitat protections? (e.g., longer transition periods or ministerial discretion on whether to apply, remove or temporarily delay protections for a threatened or endangered species, or its habitat.)
- In what circumstances would a different approach to automatic species and habitat protections be appropriate? (e.g., there is significant intersection between a species or its habitat and human activities, complexity in addressing species threats, or where a species' habitat is not limiting.)
- How can the process regarding assessment and classification of a species by the Committee on the Status of Species at Risk in Ontario be improved? (e.g., request an additional review and assessment in cases where there is emerging science or conflicting information.)

AREA OF FOCUS 3 – SPECIES RECOVERY POLICIES AND HABITAT REGULATIONS

A Government Response Statement outlines the actions the government intends to take or support to help recover each species that is endangered or threatened (i.e. it is a species-specific policy). The Endangered Species Act requires that a Government Response Statement be published within nine months after a recovery strategy is prepared. The response statement is based on advice provided in the recovery strategy, social and economic factors, and input from stakeholders, other jurisdictions, Indigenous peoples and the public.

No later than five years after a Government Response Statement is published, the Act requires a review of progress be conducted towards the protection and recovery of the species.

When a species is listed as endangered or threatened, its general habitat is protected. A species’ “general habitat” is the habitat the species depends on for its life processes. In addition, the Act requires that a habitat regulation be developed for each species that is endangered or threatened. A habitat regulation provides a description of the habitat that is protected and replaces the general habitat protection.

To learn more: [How species at risk are protected](#)

CHALLENGES	DISCUSSION QUESTIONS
<ul style="list-style-type: none">• In some cases, the time limit of nine months to develop the Government Response Statement for an endangered or threatened species is too short, and there is no option under the Act to extend this timeline when needed.• In many cases, conducting a review of progress towards the protection and recovery of a species within five years of the Government Response Statement is too soon.• The development of a habitat regulation is not needed for each species that is endangered and threatened since general habitat protection applies and can be clarified through the use of general habitat descriptions.	<ul style="list-style-type: none">• In what circumstances would a species and/or Ontarians benefit from additional time for the development of the Government Response Statement? (e.g., enable extending the timeline for the Government Response Statement when needed, such as when recovery approaches for a species are complex or when additional engagement is required with businesses, Indigenous peoples, landowners and conservation groups.)• In what circumstances would a longer timeline improve the merit and relevance of conducting a review of progress towards protection and recovery? (e.g., for species where additional data is likely to be made available over a longer timeframe, or where stewardship actions are likely to be completed over a longer timeframe.)• In what circumstances is the development of a habitat regulation warranted, or not warranted? (e.g., to improve certainty for businesses and others about the scope of habitat that is protected.)

AREA OF FOCUS 4 – AUTHORIZATION PROCESSES

The Endangered Species Act includes prohibitions against the harm, harassment or killing of species listed as endangered or threatened and prohibits the damage or destruction of their habitat. Under the Act, the government can issue different types of permits or other authorizations for activities that would otherwise not be allowed.

There are a variety of different provisions under the Endangered Species Act that would enable activities otherwise prohibited by the Act. These are:

- Stewardship agreement, s. 16: An agreement may be entered into under this section for activities to assist in the protection and recovery of species at risk.
- Health or safety permit, s. 17(2)(a): A health or safety permit may be issued for a situation that involves actions necessary to protect human health or safety.
- Protection or recovery permit, s. 17(2)(b): A protection or recovery permit may be issued for an activity that is meant to help a species at risk or its habitat, but the activity may involve actions that are otherwise prohibited under the Act (e.g., capturing or possessing the species).
- Overall benefit permit, s. 17(2)(c): An overall benefit permit may be issued for an activity that would have an adverse effect on species at risk or their habitat, as long as an overall benefit is provided to the species in Ontario through conditions of the permit. Providing an overall benefit to a species means undertaking actions that contribute to improving the circumstances for the species.
- Significant social or economic benefit permit, s. 17(2)(d): A significant social or economic benefit permit may be issued for an activity that will result in a significant social or economic benefit to Ontario, but the activity would have impacts that are otherwise prohibited under the Act.
- Instruments under other Acts, s. 18: An instrument issued under other legislation may have the same effect as a permit issued under the Endangered Species Act, if specific conditions are met.
- Aboriginal persons – permits and agreements, s. 19: Instruments under this section may be issued to (or entered into with) a band (as defined in the federal *Indian Act*), a tribal council, or an organization that represents a territorially-based Aboriginal community.
- Regulatory exemption, s. 55: An exemption may be made in a regulation that allows activities to impact species at risk without requiring a permit, provided the requirements of the regulation are met.

To learn more: [How to get an Endangered Species Act permit or authorization](#) and [Species at risk overall benefit permits](#)

CHALLENGES

- Authorization processes can create significant administrative burdens and delays, in particular for applicants filing numerous authorizations or registrations under the rules-in-regulations, for routine activities.
- The requirements that applicants must fulfill to obtain an authorization can be extensive, creating barriers to economic development (e.g., in some cases achieving an overall benefit to a species as required under a s. 17(2)(c) permit can be long, onerous, and unpredictable).
- The Act adds duplication and delay for activities that are subject to other legislative or regulatory frameworks, like forestry under Ontario's Crown Forest Sustainability Act.
- Enforcement powers are inconsistent across authorizations and regulations, which can limit the ability to inspect and enforce compliance with regulations.

DISCUSSION QUESTIONS

- What new authorization tools could help businesses achieve benefits for species at risk? (e.g., in lieu of activity-based requirements enable paying into a conservation fund dedicated to species at risk conservation, or allow conservation banking to enable addressing requirements for species at risk prior to activities.)
- Are there other approaches to authorizations that could enable applicants to take a more strategic or collaborative approach to address impacts to species at risk? (e.g., create a new authorization, such as a conservation agreement.)
- What changes to authorization requirements would better enable economic development while providing positive outcomes and protections for species at risk? (e.g., simplify the requirements for a permit under s. 17(2)d, and exemptions set out by regulation.)
- How can the needs of species at risk be met in a way that is more efficient for activities subject to other legislative or regulatory frameworks? (e.g., better enable meeting Endangered Species Act requirements in other approval processes.)
- In what circumstances would enhanced inspection and compliance powers be warranted? (e.g., regulations.)

This discussion paper has been posted on the Environmental Registry for a 45-day consultation period, closing on March 3, 2019. During the consultation period, comments may be submitted through the [Environmental Registry](#) or via email to ESAREg@Ontario.ca.