

March 4, 2019

Ministry of the Environment, Conservation and Parks  
Species Conservation Policy Branch  
300 Water Street  
Floor 5N  
Peterborough ON K9J 3C7

Via email at: [ESAREg@ontario.ca](mailto:ESAREg@ontario.ca) and online through portal

**Re: 10<sup>th</sup> Year Review of Ontario's Endangered Act: Discussion Paper (EBR Registry Number: 013-4143)**

On behalf of our members, the Canadian Wind Energy Association ("CanWEA") would like to provide feedback on the Discussion Paper (EBR Registry Number: 013-4143) released by the Ministry of the Environment, Conservation and Parks ("MECP") on how the province can achieve positive conservation outcomes for species at risk while increasing efficiencies for businesses through effective regulatory measures.

As outlined in the Discussion Paper, the results of the review are intended to achieve, in legislative or other reform, the following objectives:

- 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; and
- Maintain an effective government oversight role.

Overall, CanWEA welcomes this review and supports these objectives. Specific comments and requests for clarification are summarized below.

## **1 COMMENTS ON THE FOUR AREAS OF FOCUS**

CanWEA comments are presented in a table format following the structure of the Discussion Paper (See appendix A).

## 2 ADDITIONAL COMMENTS

We submit the following additional general comments to consider during the review of the Endangered Species Act (ESA).

### 2.1 Additional Objective – Adaptive Management

CanWEA suggests the addition of the following objective:

*Enable ongoing/continuous improvement of processes:*

The Discussion Paper notes that there have been key process challenges as possible areas for improvement in terms of costs, transparency and conservation outcomes. Accurately predicting potential impacts to species at risk is not achievable at this time, and it is therefore important to adaptively manage operations and monitoring activities as new information becomes available, both in the scientific community and on a site by site basis. Our members want to highlight the importance of taking an adaptive management approach, which refers to a structured, iterative process by which recurrent decisions are made based on information gained from the results of prior mitigation, research, and conservation management actions. The overall impacts of wind energy on individual species, and the effectiveness of various mitigation and conservation measures available, are areas of highly evolving and intensive study from which new, scientifically-derived information is continually emerging. It is CanWEA's position that it is the conservation goal itself that is of critical importance, not the mechanism by which individual companies select to meet that goal. As such, **an adaptive framework helping to inform potential future improvements should be a priority and the principles of adaptive management entrenched within the new legislation.**

### 2.2 Climate Change Impacts

A robust adaptive management process should be based on high-level objectives aimed at ensuring long-term population sustainability for species at risk. A strong approach would be aimed at identifying all pressures and limiting factors that present risk to species of interest, including those associated with global climate change. According to the Intergovernmental Panel on Climate Change (IPCC), the earth's climate has warmed between 0.7 degrees Celsius (°C) and 1.1 °C over the past century, and most of the observed increase in globally averaged temperatures since the mid-20<sup>th</sup> century is likely due to the observed increase in anthropogenic greenhouse gas (GHG) concentrations. For example, climate impacts, alone or coupled with landscape changes, represent some of the strongest population drivers for several species of birds in Ontario (Melles et al. 2011, Yalcin and Leroux 2018). Climate change will also likely impact bat species in Ontario, such as amplifying the effects of white-nose syndrome, reducing some species' ability to use habitats for critical life functions, causing resource decoupling (i.e., timing of prey availability is no longer compatible with bat ecological requirements) and driving range contractions for temperate-climate species in particular (e.g., Rodenhouse et al. 2009,

Jones et al. 2009, Loeb and Winters 2012). CanWEA emphasizes the importance of clean energy production; a crucial component for reducing global carbon emissions and combatting the impacts of climate change, several of which are expected to have profound negative effects on species populations. An optimal approach would be to incorporate the current and predicted effects of climate change on species at risk when defining objectives, limiting factors, tradeoffs and management alternatives within a science-based decision analytic framework, to maximize the likelihood of desired outcomes for these species. The production of clean, renewable energy should therefore be acknowledged and considered a tool for reaching conservation objectives within this broader framework. Regulatory efficiencies to support the increased production on non-GHG emitting electricity generation is aligned well with the objectives of this review and is backed by sound scientific evidence as noted by the references above.

### **2.3 Better Conservation Outcomes and Return on Investment**

Recognizing the importance of the climate change threat, CanWEA members consider that there is a need to take a balanced approach to assessment that will encourage the growth of renewable energy and allow flexibility at the individual project level. Such an approach will increase the effectiveness of response measures taken by industry, add to the scientific body of knowledge and increase the likelihood of sustaining natural and human systems at a provincial, national and global scale. Aligned priorities and investments will create synergies for multiple species and habitats with a focus on identifying and addressing root causes of declines.

### **2.4 Streamlined Approach**

CanWEA notes that monitoring efforts associated with an adaptive management approach should be targeted towards high-level species objectives, be scientifically-derived, and capitalize on monitoring efforts from multiple projects across regions of interest. Such an approach will improve the value of monitoring information, potentially reduce the monitoring requirements at individual projects, and help identify optimal, project-specific mitigation or compensation measures.

A streamlined authorization process could be implemented to allow an entity to cover multiple projects or facilities under one application. This could provide an opportunity to combine mitigation commitments from multiple projects into mitigation banks, for instance, which are likely to lead to better conservation outcomes for species through habitat conservation, research, or other targeted efforts.

CanWEA members also feel that direct, on-site collaboration between industry experts in the field and ministry representatives would contribute to more effective understanding and adaptive implementation of compliance measures, and lead to a more practical application of expertise. Mutual goals of conservation and efficiency could be achieved by streamlining site-level efforts with appropriate time spent in the field versus agencies simply reviewing project documents.

## 2.5 Transition Period

Any transition in ESA regulatory processes should be implemented in a manner that acknowledges efforts already undertaken at operational wind farms and projects under development, to ensure that additional, unplanned assessments and surveys will not be required following the adoption of an updated act. A transition period or “grandfathered” approach should be included in an updated act. This will provide certainty for developers and operators that regulatory requirements for their projects will not change during the regulatory approval process and during operation of their assets. This will ensure that delays to emissions free renewable energy do not occur.

Thank you for the opportunity once again to provide feedback on the potential changes to Endangered Species Act (ESA). If you have any questions or require further clarification on any of the comments presented within this letter, please do not hesitate to contact me at (647-281-4288 or [BrandyGiannetta@canwea.ca](mailto:BrandyGiannetta@canwea.ca)).

Sincerely,



Brandy Giannetta  
Regional Director, Ontario

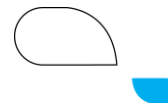
## 3 LITERATURE CITED

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## 4 APPENDIX A

### AREA OF FOCUS 1 – LANDSCAPE APPROACHES

CHALLENGES	DISCUSSION QUESTIONS	CANWEA COMMENTS
<p>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 maybe preferred.</p>	<p>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.)</p>	<p>Opportunity to combine mitigation approaches for species at a landscape scale could potentially reduce monitoring needs and costs and provide greater conservation benefits. Instead of a targeted approach for a single species (installing nest boxes, nest platforms, single-species monitoring, etc.), conserving or enhancing a meadow or woodland that provides foraging and habitat resources for multiple species could be favored. Multi-species monitoring approaches, if appropriately designed, will result in economies of scale in data management, field effort, and reporting. Multi-species approaches may also streamline consultation efforts, reduce potential conflicts among species at risk, address common threats, promote thinking on a broader scale, and reduce duplication of effort in conservation planning.</p> <p>While there are benefits to adopting a multispecies or landscape approach, CanWEA members caution that a “one size fits all” approach also has the potential to increase risks of missing local realities and input. The province of Ontario has climates and ecosystems that vary from north to south and east to west, and it is important that these variations be accounted for. High level mapping should not be overly-prescriptive and should rather be focused on outcomes and priorities for the species in question. If landscape techniques are applied, it is important that projects already located in core areas or other potentially restricted areas are not required to implement additional monitoring or mitigation measures. For projects in the development stage, restrictions, monitoring requirements and other mitigations should be clearly communicated to developers in advance of project approval. The scientific basis behind these requirements should also be made clear.</p>
<p>For species that depend on habitat across wide ranges, a landscape approach that enables</p>	<p>Are there existing tools or processes that support managing for species risk at a landscape</p>	<p>CanWEA recognizes that there are various landscape-level tools available and in practice by agencies, NGOs, and industries, and that there are potential benefits in outcomes to using such</p>

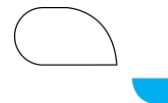




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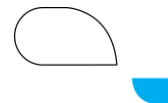
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CHALLENGES	DISCUSSION QUESTIONS	CANWEA COMMENTS
planning and authorizing activities at a broad scale may be preferred.	scale that could be recognized under the Endangered Species Act?	<p>an approach. Examples include The Nature Conservancy/World Economic Forum <i>Blueprints for a Greener Footprint</i> initiative and framework, and the U.S. Fish and Wildlife/Midwest Grasslands Network collaborative, including mapping and prioritization tools made available to industry and other sectors (e.g., <i>The Conservation Atlas for Midwest Grasslands</i>). At the same time, conservation over large spatial scales can lead to complications and inefficiencies if not conducted well (e.g., inadequate coordination among regulatory agencies, lack of clarity and information-sharing among stakeholders and researchers). CanWEA considers landscape approaches to species and multi-species conservation to be potentially preferred if:</p> <ul style="list-style-type: none"><li>• Broad-scale objectives and conservation targets are well-defined and based on science; objectives should include renewable energy and sustainability targets;</li><li>• Focus is on identifying overall viability needs for long-term persistence of Species at Risk and the value and development of renewable energy is considered within this context;</li><li>• Baseline information pertaining to: available and emerging management options; information gaps and monitoring needs; mapping and other analytical tools; and potential cumulative impacts is made available to developers and operators during permitting and adaptive management plan development;</li><li>• Solutions for individual projects are identified in a coordinated, objectives-based manner, with agencies, industry and other stakeholders working from the same set of facts; coordination should include identifying opportunities for shared options among wind energy facilities and other entities to reduce costs and increase benefits to the species; and</li><li>• Landscape-scale planning takes place within a decision framework that takes all objectives into consideration, identifies tradeoffs, and offers streamlining, predictability, and transparency as compared to the current risk assessment and permitting process.</li></ul>



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

CHALLENGES	DISCUSSION QUESTIONS	CANWEA COMMENTS
There is not enough public notice before a new species is automatically listed on the Species at Risk in Ontario List.	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.)	<p>A notification and opportunity for coordination/information-sharing meeting should be provided prior to listing a new species to sectors considered a potential threat to the species.</p> <p>Longer timelines should be implemented to match the length of approval processes. It takes approximately two years to collect data and conduct all studies required in support of project development. The Species at Risk list a developer starts with at day 1 of the process should be the same as when surveys and mitigation plans are completed. In this context, a two-year ESA transition should apply to projects already under development.</p>
In some cases, automatic species and habitat protections can contribute to high uncertainty and costly impacts to businesses and the public.	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.)	<p>As discussed above, a longer transition period would help reduce industry uncertainty.</p> <p>Having a permitting process and mitigation approach in place prior to listing would allow the industry to incorporate these factors into projects during development.</p>
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.	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	<p>CanWEA would appreciate more transparency during COSSARO process. Meetings (recorded or minutes of meeting) could be made available to stakeholders and interested.</p> <p>Focus should be on adopting a structured, decision-analytic approach with clearly-defined threats, objectives, and potential response solutions. The decision process behind each listing should be science-based and clearly laid out to the public, industry, and other stakeholders.</p>

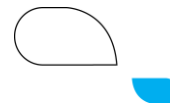




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CHALLENGES	DISCUSSION QUESTIONS	CANWEA COMMENTS
	where a species' habitat is not limiting.)	
	How can the process regarding assessment and classification of a species by the Committee on the Status of Species at Risk in Ontario be improved? (e.g., request an additional review and assessment in cases where there is emerging science or conflicting information.)	<p>Different threats and sector-specific activities have varying levels of impact, contingent on the species, habitats or ecosystem/landscapes of interest. Assessing threat impact is multi-factorial, and includes consideration of the timing of the threat (e.g. past, immediate and ongoing, and/or likely to occur in the future), its magnitude (e.g. the number and/or proportion of species, habitats, ecosystems affected); the severity of the impact (e.g. the overall declines caused by the threat); and the irreversibility of the threat (e.g. degree to which the effects of the threat can be reversed and biodiversity values restored).</p> <p>The MECP should enable industries and other stakeholders to participate in process when they are considered a threat to the species. This would allow the most up-to date technical information to be provided by the industry involved and allow for workable best management practices to be incorporated into solutions regarding listing status and conservation measures.</p>







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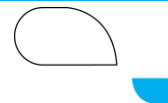
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### AREA OF FOCUS 3 – SPECIES RECOVERY POLICIES AND HABITAT REGULATIONS RISK

CHALLENGES	DISCUSSION QUESTIONS	CANWEA COMMENTS
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 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.)	Effective conservation of species at risk requires identifying and mitigating threats to their long-term persistence. When the private sector is identified as a threat or as having an opportunity to aid in conserving species (e.g. indirectly in addressing climate changes), CanWEA considers that the species and Ontarians would benefit from additional time in planning and developing Government Response Statements.
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.	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.)	Observable improvement in conservation status occurs over long timescales (10-50 years) and conservation efforts must be ongoing to sustain gains. Conservation outcomes should be evaluated once the recovery strategy is completed or near completion or when there is high value and urgency in producing a new recovery strategy. Short-term evaluation efforts may be increased when potential threats or solutions are evolving quickly (e.g. use of emerging mitigation measures at operational wind farms to minimize potential impacts to bats); however, long-term improvements at the population level should be evaluated on a much broader timescale based on data from multiple sites as well as on updated population-level vital rate data.
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	In what circumstances is the development of a habitat regulation warranted, or not warranted? (e.g., to improve certainty for businesses and	Habitat restrictions should not be overly broad and should be focused on specific features that have value to the species or suite of species at risk. Similarly, setbacks from specific features

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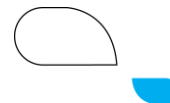




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CHALLENGES	DISCUSSION QUESTIONS	CANWEA COMMENTS
clarified through the use of general habitat descriptions.	others about the scope of habitat that is protected.)	for the purposes of wind development should be based on current science and updated periodically as new information is acquired.



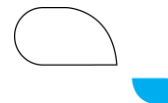


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## AREA OF FOCUS 4 – AUTHORIZATION PROCESSES

CHALLENGES	DISCUSSION QUESTIONS	CANWEA COMMENTS
<p>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.</p>	<p>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.)</p>	<p>A streamlined authorization process could be implemented to allow an entity to cover multiple projects or facilities under one application. This could also provide an opportunity to combine mitigation efforts such as through a larger habitat conservation effort such as a mitigation bank.</p> <p>Empowering Regional Directors, as an example, to be able to sign permits and agreements in a timely manner is one way to ensure efficiencies in the authorization process. Often, the time required to study, understand and mitigate creates a need for an amendment to ensure the conservation goals are attainable and compliance is successful.</p> <p>The on-line registration is good in concept as is the ability to submit a “Notice of Activity Form and Other Notices under the ESA” for wind projects. There could be some efficiencies realized for the ministry and the industry. A few points of concern have arisen through the registration, as presented below:</p> <ul style="list-style-type: none"> <li>• Members have several notices and overall benefit permits under clause 17(2)(c). There should be a more transparent and easily searchable registry to facilitate access of all documents;</li> <li>• Once a Notice of Activity is issued, it should be open to easy amendment, especially if a new species gets added to the ESA list and it could be present at an existing wind farm;</li> <li>• Some operators experienced some challenges with the MNRF numbering system: Correspondence are sent referencing the MNRF number and making no mention of what site this communication is referring to. With changed numbers, the responsibility was on operators to search which facility the inquiry was about.</li> <li>• A 14-day time window is often too short to respond to certain requests; and</li> <li>• Some aspects of the on-line registry are cumbersome to use.</li> </ul>





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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).	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.)	<p>The current approach to the overall benefit permit is not workable for wind energy projects.</p> <p>To date, MNRF has not been willing to consider this approach for operating wind facilities, even for research projects that will ultimately have significant benefits for the species, such as the testing of bat fatality minimization technologies. Because of the permitting challenges, Ontario is behind other jurisdictions in opportunities for technology verification and implementation.</p> <p>A workable permitting program is needed to allow vital research to continue and collect meaningful data while providing certainty to operators under the regulation.</p>
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.	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.)	CanWEA has no comment on topic., except that the regulatory exemption process is appreciated by CanWEA Members as it allowed faster project approval when potential impacts are well understood, and mitigation measures are available.
Enforcement powers are inconsistent across authorizations and regulations, which can limit the ability to inspect and enforce compliance with regulations.	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.)	Wind projects should not have to report impacts to species at risk twice. Currently the REA process requires monitoring and reporting of impacts to birds, bats, and raptors. The ESA adds duplicative monitoring and reporting, and as a result, fatalities are "double counted" under both regulations, resulting in added cost to the projects.

