



City of Brampton Response to the  
10<sup>th</sup> Year Review of  
Ontario's Endangered Species Act: Discussion Paper

February 21, 2019

## City of Brampton Comments

The City of Brampton is generally supportive of the proposals to increase efficiency, streamline and clarify processes, and maintain effective government oversight, and have some recommendations in this regard. For example, the Province could approve projects with potential to impact Endangered Species faster by:

- providing more clarity to proponents regarding compensation requirements, which are currently difficult to identify at the outset of a project;
- providing Best Management Plans to assist proponents to proceed in a manner that would avoid the need for permits;
- providing requirements that are commensurate to the impacts of each project, where currently all undertakings are treated the same, whether they be construction of road or development of a trail;
- developing a standardized protocol for mitigation strategies on species by species basis (see commentary under Question 2 below).
- developing publicly accessible, centralized mapping of Endangered Species Habitat.

Additionally, changes to the administration of the Act would greatly assist. For example, there is currently a long wait time for Provincial issuance of permits, a significant delay in the transition from General Habitat Protection and Regulated Habitat Protection, and a lack of communication regarding species being considered for Listing. The implementation of the improvements listed above would be beneficial in terms of protecting species at risk and enhancing efficiency.

The City does not support changes to the Act that would further endanger Species at Risk or their Habitat by prioritizing development over environmental concerns. The foundation of the Act is the classification of species by an arm's length group of experts that makes decisions based on up-to-date science, and the recognition and protection of these species' habitat. Weakening or removing these elements from the statutory regime would, from the City's perspective, have irreversible negative impacts on the province.

The City's responses to the questions posed in the 10<sup>th</sup> Year Review Discussion Paper are set out below.

## AREA OF FOCUS 1 – LANDSCAPE APPROACHES

Rather than focus on case-by-case and species-specific policy approaches, the Province is investigating whether taking a landscape approach, “enables planning and authorizing activities at a broad scale”.

**Question 1: 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.)**

Brampton advises that a landscape approach looking at habitat impact compensation within a sub-watershed (for aquatic species) and nearby land (for terrestrial species) will be more strategic. This allows flexibility for habitat compensation while achieving the same objective and improved outcomes for species at risk.

**Question 2: 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?**

The City of Brampton, in partnership with the Ministry of Natural Resources and Forestry and Toronto and Region Conservation Authority, undertook the development of an innovative strategy to improve the effectiveness, efficiency and consistency of identifying Redside Dace-regulated habitat impacts and mitigation projects for development within Redside Dace regulated habitat. Please refer to the "Overall Benefit Strategy for Strategic Planning of Urban Development Projects within Redside Dace-Regulated Habitat", dated November 2017.

This approach has been well-received by all stakeholders as it provides an objective, predictable solution, and Brampton suggests that it be adapted and replicated throughout the Province for other species and habitats.

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

The Province has indicated that in its view, there is insufficient notice prior to the automatic listing a new species on the Species at Risk in Ontario List, and that the automatic listing process can lead to an increase in costs for business and the public. The Province is also seeking to increase the transparency around the assessment and classification of species by the COSSARO.

**Question 3: 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.)**

The City of Brampton recommends that new listing on the Species at Risk in Ontario List include a defined transition period for projects that have received approval under the Environmental Assessment Act.

The City also recommends that the Ministry consider maintaining a contact list of all stakeholders within a given area and notify these parties directly about updates to the List.

**Question 4: 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.)**

No. The City is recommending the precautionary principle should apply to any decision about classifying species as endangered. If it has been demonstrated that a species is endangered or threatened to the satisfaction of the COSSARO, then it must be automatically given protection. The COSSARO uses the best and most up-to-date science to determine that listing a species is warranted, and delaying or even removing protections would completely undermine the purpose of the Act.

**Question 5: 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.)**

None, as noted above the precautionary principle needs to apply when assessing whether or not to protect a species that the COSSARO has identified as being at risk.

**Question 6: 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.)**

The City recommends that the classification of species continue to be based on scientific evidence, as determined by the COSSARO. Waiting for more evidence prior to adding a species to the List will put the species at greater risk.

If the option for an additional review/assessment is being considered, then such a review should not delay the addition of the species to the List or the implementation of habitat protection. These measures should be in place while the review is carried out. Removal

of species from the list should only be contemplated where a blatant error was made, or where reliable new scientific information becomes available. These decisions should be made based on a rigorous scientific process, in accordance with the precautionary principle.

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

Under the Act, the Province has one year from the time a species is added to the List

The Review Document states that nine months is not long enough to prepare a Government Response statement, and that carrying out a progress review within five years is too soon. The Review Document also indicates that it is not necessary to develop a habitat regulation for each species because, “general habitat protection applies and can be clarified through the use of general habitat descriptions.”

**Question 7: 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.)**

Maintaining urgency in the protection of endangered species is important, therefore the City recommends that additional time for Response Statements should only be considered when there is compelling rationale for a delay as outlined.

**Question 8: 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.)**

Again, maintaining urgency in the protection of endangered species is important, therefore additional time for conducting progress reviews should only be considered when there is a compelling rationale. Delaying these reviews runs the risk of overlooking further declines in populations or new risks to habitat, so it is important to conduct reviews regularly. City’s recommendation is that any change to the standard review time of five years should be based on up-to-date science, as determined by an objective third party such as the COSSARO.

**Question 9: 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.)**

The City's position is that more precise habitat regulations are only warranted in circumstances where it is demonstrated that additional protection is needed to protect the species.

#### **AREA OF FOCUS 4 – AUTHORIZATION PROCESSES**

The Province has indicated through the Review Document that applicants are seeing delays and are burdened administratively by the requirements for obtaining authorizations for routine activities under the Act. It is also stated that the Act duplicates requirements under other legislation and regulatory frameworks, all of which creates barriers to economic development. Finally, inconsistent enforcement powers are identified as a concern.

**Question 10: 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.)**

New authorization tools could help reduce delays in project approvals and species recovery by funding larger projects with larger benefits. Any such tools, however, must require resources to be spent within the jurisdiction and/or watershed where the impact occurs, unless there are compelling ecological reasons for using the resources outside the jurisdiction and/or watershed. Any decisions in this regard must be made based on scientific expertise.

**Question 11: 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.)**

In certain circumstances, the City supports the use of alternative authorizations such as conservation agreements between a government agency and landowner that result in the permanent protection of a species habitat. The City cautions that these authorizations must be premised on the demonstration of net ecological benefit to the species through sound science.

**Question 12: 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.)**

The City of Brampton recommends that the Province consider instituting minimum response timelines for permit applications, develop standardized compensation protocols such as the City's West Humber Strategy for redbreasted dace, and create publicly accessible guidelines setting out clear criteria for circumstances that do and do not require a permit.

**Question 13: 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.)**

The City recommends the Province examine the possibility of integrating the permitting process under the Act with the Conservation Authorities' and Department of Oceans and Fisheries permitting process. This has the potential to increase efficiency and eliminate duplication, while ensuring that subject matter experts are reviewing applications based on sound science.

**Question 14: In what circumstances would enhanced inspection and compliance powers be warranted? (e.g., regulations.)**

The City takes the position that the existing inspection and compliance powers are sufficient, but that the Province should direct more resources towards enforcement on projects which may have a significant impact to endangered species or consider delegating compliance powers to local Conservation Authorities.