



May 16, 2019

Via email: ESAREg@ontario.ca

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RE: Response to EBR Posting 013-5033: 10th Year Review of Ontario's Endangered Species Act: Proposed changes

Thank you for providing the City of Vaughan an opportunity to comment on the proposed changes to the *Endangered Species Act (ESA)*. City staff comments are provided within the wider context of population trends of wildlife species in Canada, based on the World Wildlife Fund Canada's (WWF-Canada) Living Planet Index Report 2017, that identified the following:

- From 1970 to 2014, half (451 of 903) of monitored wildlife species in Canada declined in abundance. Approximately half of the mammals (54 per cent), fish (51 per cent), birds (48 per cent), and amphibians and reptiles (50 per cent) included in the analysis exhibited declining trends during this time.
- Of the half-monitored species with declining trends, the Living Planet Index shows, on average, a decline of 83 per cent, from 1970 to 2014

The following represents the City's comments.

General Comments

1. City staff support streamlining the *ESA* process, but not at the expense of species protection. We support the technical advice of wildlife biologists and conservation policy experts who understand the science behind species recovery. We do not support the delay in designating species or delisting species where science supports their protection and recovery. Further work is needed by the Province to find a balance between species protection and other regulatory priorities.
2. Through the City's efforts with the Toronto and Region Conservation Authority (TRCA), City staff have been informed that the City of Brampton has established a City-wide Species at Risk (SAR) program with TRCA and the Ministry of Natural Resources and Forestry (MNR) Aurora District Office. This project has been quite successful in planning for future capital and development projects. With the proposed changes, are these types of partnerships expected from other GTA municipalities?
3. Since the enactment of the *ESA* in 2008, municipal staff have been unclear as to our roles and



responsibilities in the implementation of the *ESA*. Through the development review process, the City informs applicants of their responsibilities to abide by the *ESA*, but very rarely are we engaged in the permitting process. Clarification is needed whether municipal staff should be playing a larger role as part of processing development applications due to potential SAR impacts.

Table 1: City of Vaughan comments on the proposed changes to the *Endangered Species Act*

Province's Proposed Changes to the ESA	City of Vaughan Comments
1. Assessing species at risk and listing them on the Species at Risk in Ontario List	
<p>E. Require COSSARO to consider a species' condition around its broader biologically relevant geographic area, inside and outside Ontario, before classifying a species as endangered or threatened. If the overall condition of risk to the species in the broader biologically relevant geographic area is lower, COSSARO would be required to adjust the species' classification to reflect its overall condition.</p>	<p>The City of Vaughan recommends removing Recommendation "E" that would change the species at risk assessment process.</p> <p>The recommendation to ignore the status of species' populations at the edge of their ranges is not consistent with evidence from the conservation biology literature. Populations of species at the edge of their ranges can be adapted to locally unique environmental conditions and confer overall genetic variability. We provide excerpts from just two of many recent peer-reviewed articles in support of the City recommendation.</p> <p>"Therefore, range-edge genotypes that are better adapted to extreme climates relative to core populations may be essential to species' persistence during periods of rapid climate change. "</p> <p>Evan M. Rehm, Paulo Olivas, James Stroud, and Kenneth J. Feeley. 2015. Losing your edge: climate change and the conservation value of range-edge populations. <i>Ecology and Evolution</i>. Oct; 5(19): 4315–4326.</p> <p>"Second, from a species conservation perspective, the study provides a strong justification for management strategies that promote gene flow into marginal and threatened</p>

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	<p>populations. As Polechová [8] demonstrates, for marginal populations, the beneficial effects of gene flow (elevated genetic diversity) exceed the costs (migration load), resulting in a net benefit of facilitating dispersal. Conservation biologists have been slow to embrace assisted gene flow as a management option. Yet Polechová's work [8], combined with the increasing evidence of the success of assisted gene flow in threatened species management [18], should act to galvanise action on this front."</p> <p>Connallon T, Sgrò CM (2018) In search of a general theory of species' range evolution. PLoS Biol 16(6): e2006735. https://doi.org/10.1371/journal.pbio.2006735</p>
<p>4. Issuing <i>Endangered Species Act</i> permits and agreements and developing regulatory exemptions</p>	
<p>Ontario is also proposing to create Canada's first independent Crown agency proposed to be called the Species at Risk Conservation Trust, to allow municipalities or other infrastructure developers the option to pay a charge in lieu of completing certain on-the-ground activities required by the act. The funds would support strategic, coordinated and large-scale actions that assist in the protection and recovery of species at risk.</p> <p>The proposed changes would authorize the creation of a regulatory charge that could be paid by persons who are permitted to carry out otherwise prohibited activities under certain permits, agreements, and regulations. The charge</p>	<p>City of Vaughan staff suggest that a "regulatory charge" that could be "paid-in-lieu of fulfilling certain potential conditions that could otherwise have been imposed under the permit, agreement, or regulation" is not an effective or reliable conservation management approach for species that use woodlands, wetlands, valleylands and streams. Even for those habitat types that can be created, such as for woodlands and wetlands in appropriate locations, it takes many years of management and monitoring to ensure that they are viable habitat for species.</p> <p>The recommendation to start a Species at Risk Conservation Trust may be appropriate for species of grassland or early successional habitats. Even in this context, habitat banking and habitat management must occur in advance</p>

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<p>would be paid in lieu of fulfilling certain potential conditions that could otherwise have been imposed under the permit, agreement, or regulation. The proposed charges would only be available in respect of species prescribed by regulation. The price for the payment-in-lieu (i.e. regulatory charge) will be within the range of costs that a client would have otherwise incurred through meeting the species-based conditions of an authorization. Clients would still need to fulfill some on-the-ground requirements, including considering reasonable alternatives for their activity and taking steps to minimize the adverse effects of the activity on the species at risk.</p>	<p>of the impacts on the local populations of a species to ensure persistence of the species' meta-populations.</p> <p>The test for payment that the “price for the payment-in-lieu (i.e. regulatory charge) will be within the range of costs that a client would have otherwise incurred through meeting the species-based conditions of an authorization” is not effective. Habitat banking and habitat management activities may be costlier than maintaining species in-situ in existing habitat. Hence, the test for payment as outlined in the proposal is most likely to fail to ensure species persistence.</p> <p>If an exemption is sought under the <i>ESA</i>, for which compensation (i.e. the cash-in-lieu regulatory charge) is proposed rather than protection. Does it result in the loss of habitat (i.e. part of the ecosystem)? Does a decision not to protect that habitat in favour of the regulatory charge under the <i>ESA</i> override other imperatives that might be protecting certain affected areas, such as providing other ecosystem functions or services?</p> <p>The City would like to understand the Province's compensation methodology (range in cost for compensation) as it pertains to quantifying the level of impact for a species and/or area of impact (e.g., land area).</p> <p>The City would like to gain an understanding on how the Species at Risk Conservation Trust will allocate the funds generated through compensation. While the City is of the opinion, consistent with the Provincial Policy Statement,</p>

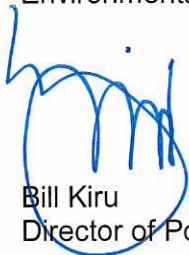
Province's Proposed Changes to the ESA	City of Vaughan Comments
	<p>that significant habitat should be protected rather than compensated, those instances of compensating for habitat of SAR should be direct compensation (i.e., nearby or in the same jurisdiction) for the lands being impacted. Consideration should be given to geographically and/or based compensation sites within the areas of impact.</p> <p>If compensation is proposed by a landowner/proponent, is confirmation required that MOECP staff are reviewing and approving the justification reports, or is this review being delegated to the Conservation Authorities?</p> <p>City staff strongly suggest that municipal development review processes be considered in the development of a SAR compensation plan. Staff need to understand how this new process may impact timelines in the development application process i.e., negotiations between a proponent and the MOCEP. It is our understanding that SAR negotiations shall not impact the timing of approvals.</p> <p>Through our experience working on municipal infrastructure projects, City staff are often unclear as to how to quantify "overall benefit compensation" for projects such as Redside Dace habitat impacts. We suggest that the compensation requirements provide a methodology that is quantifiable and transparent.</p> <p>Clarification is needed regarding whom would be eligible to pay a charge-in-lieu of completing certain on-ground activities required for the <i>Act</i>. The discussion paper makes reference to</p>

Province's Proposed Changes to the ESA	City of Vaughan Comments
	<p>municipalities or other infrastructure developers; are private developers eligible?</p> <p>The City would like to understand if the proposed use of the regulatory charge must be requested by a municipality or governmental body; or at least endorsed by a municipality or governmental body.</p> <p>If freestanding requests can be made to the Minister, outside the other processes, by a landowner, will there be consultation with the affected municipalities and agencies?</p> <p>The City would like to understand the process for applying for an exemption. Would it be through an Environmental Assessment (EA) process or a development application?</p> <p>Clarification is needed from the Province, if a public process for consideration would be needed for site specific request not to protect (if outside an EA or Development Application), including public notification (other affected landowners) and the opportunity for comment to the decision-making authority. For instance, Overall Benefit Permits are posted in the Environmental Registry for public review and comment.</p> <p>Does the use of the regulatory charge bind the Crown and its agencies and ministries (e.g. an MTO or Metrolinx EA)?</p>

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<p><i>Additional Changes relating to Issuing Permits, and to Agreements and Regulatory Exemptions</i></p> <p>D. Enable the Minister to establish codes of practice, standards or guidelines with respect to species at risk or their habitat, and enable regulations made under the Act to incorporate documents to supplement requirements or conditions related to species at risk;</p> <p>E. Create a new landscape agreement that takes a strategic, coordinated and consolidated approach to authorizing clients undertaking multiple activities, and which could allow for limited conservation banking to achieve positive outcomes for species. The issuance of a landscape agreement would be dependent on conditions, including: the agreement requires reasonable steps to minimize adverse effects of the authorized activities on the impacted species under the agreement, the agreement requires actions to benefit one or more species, reasonable alternatives have been considered, including those that would not adversely affect the species specified in the agreement, and the beneficial actions required by the agreement outweigh the adverse effects to the impacted species under the agreement.</p> <p>F. Replace s.18 with a new provision that would include a more flexible test and would allow the Minister to prescribe activities by regulation, to allow them to be carried out without requiring any additional authorizations under the ESA.</p>	<p>D. Municipalities would appreciate the opportunity to provide input into the development of standards and guidelines with respect to species at risk or their habitat as it pertains to the development review process. Currently, in the development review process, staff refer matters of SAR protection to the local office of the Ministry of Natural Resources and Forestry.</p> <p>E. Clarification is needed as to how the landscape agreement differs from an overall benefit permit? In our current practise municipal staff are not involved in an overall benefit permit process and we do not include conditions enforcing the permit to applicants. We would like to understand how the landscape agreement implements the need to create new habitat, when municipalities utilize other planning tools, such as Site Plan and Plan of Subdivision agreements. Would the landscape agreement be strictly managed by the Province? Would the proposed new "landscape agreement" be similar in context?</p> <p>F. Provide examples as to when s.18 would be applied.</p>

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5. Enforcing the <i>Endangered Species Act</i>	
<p>The <i>Endangered Species Act</i> contains modern enforcement provisions, but there are a few areas that could be enhanced and/or need updating to reflect the transition of the file from the Ministry of Natural Resources and Forestry to MECP</p> <p><i>The proposed changes would:</i> Enhance and streamline enforcement powers by: Applying inspection powers and offence provisions that already exist in the ESA to also include activities conducted under the regulations. Extending current protection order powers that can be used with the Minister's discretion to protect habitat during the intervening period before a species is listed, or where a regulation has been made so that the prohibition is not applicable, to also include the discretion to similarly protect species. Update provisions related to enforcement officers by removing identification of specific classes of persons (e.g. conservation officers) as enforcement officers and retain the Minister's authority to designate officers</p>	<p>Since the enactment of the ESA, municipalities have been unclear in their role in the implementation and the enforcement of the ESA in municipal land use processes.</p> <p>We would like to understand how the Province applies its inspections powers on the development community. Is it the expectation of the Province in removing identification of specific classes of persons as enforcement officer, that municipal enforcement officers and/or TRCA enforcement officers be delegated this responsibility?</p> <p>Please provide clarification as to when a Minister's order would be applied in these circumstances as the City would like to understand the context.</p>

Should you have any questions related to this submission, please contact Ms. Ruth Rendon, Senior Environmental Planner at ruth.rendon@vaughan.ca or via telephone at 905-832-8585 ext. 8104.



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