



PLANNING, DEVELOPMENT  
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May 17, 2019

Public Input Coordinator  
Species Conservation Policy Branch  
Ministry of Natural Resources and Forestry  
300 Water Street, Floor 5N  
Peterborough, ON K9J 3C7

**RE: 10th Year Review of Ontario's Endangered Species Act: Proposed changes  
(ERO Registry Number 013-5033)**

Dear Public Input Coordinator:

On April 18, 2019, the Province posted the document titled "10th Year Review of Ontario's Endangered Species Act: Proposed changes" to the Environmental Registry of Ontario for a 30-day comment period. The following are comments from Regional staff on the proposed changes to the Act. These comments will be included as part of a Council Report that will be submitted to the Province as comments on Bill 108, More Homes, More Choice Act, 2019.

**Ontario's Endangered Species Act**

Staff has reviewed the Province's proposed changes to Ontario's Endangered Species Act (ESA) with respect to:

- Enhancing the Province's oversight and enforcement powers to ensure compliance with the Act;
- Improving transparent notification of new species' listings;
- Ensuring appropriate consultation with academics, communities, organizations and Indigenous peoples across Ontario on species at risk recovery planning; and,
- Creating new tools to streamline approval processes, reduce duplication and ensure costs incurred by clients are directed towards actions that will improve outcomes for the species or its habitat.

While the proposed changes to the Endangered Special Act are meant to improve the efficiency and effectiveness of the Act, there are publically stated concerns that:

- Species listed as threatened or endangered may no longer be automatically protected;
- There will be increased opportunity for political interference in the listing process;
- Developers and other activity proponents will be able to pay into a fund to

compensate for harming species at risk and their habitats, rather than providing an on-the-ground overall benefit to species; and

- Southern Ontario species at the northern limit of their range may receive less or no protection, depending on their status outside Ontario.

The Region relies on the Province to effectively require the identification and protection of significant species and their habitat. Over the past 10 years a great deal of knowledge has been gained on the health and vulnerability of Ontario's species at risk, and the challenges and opportunities experienced while planning for their ongoing protection and conservation.

The system-wide changes being proposed by the Province reflect frustrations that are a result of a relatively young policy framework and practise, coupled with increasingly high development pressures. A balanced long-term approach will be necessary to ensure that the planning and development decisions made in the present do not prohibit conservation opportunities in the future. Ontario must remain committed to protecting its biodiversity, including Ontario's most vulnerable plants and animals, and their important habitats.

### **Option to pay**

Proposed changes to the Endangered Species Act would allow developers and other proponents to pay into a fund in lieu of fulfilling requirements for on-the-ground compensation.

The conservation of habitats and species in-situ is fundamental to the long-term effectiveness of conservation efforts. Having the option to pay, instead of actively conserve, will result in the incremental loss of critical habitat and individual lifeforms, and will limit the overall research and conservation potential for the species at risk. The Region acknowledges that there are circumstances where a broader research-based approach to addressing a particular threat to a species is needed. Funding, from a development related source such as the proposed "Conservation Trust", could be construed as being able to "pay to slay". An alternative source of funds must be found to enable that important work to be undertaken.

### **Recommendation**

The Province should prioritize in-situ conservation, with very strict criteria for opting out. In addition, the Province should continue to support proactive species at risk research with funding that is not directly related to development.

### **Non-science-based influence**

The Committee on the Status of Species at Risk in Ontario (COSSARO) is a committee comprised of qualified scientists who perform science-based assessments of whether a

species is at risk. The Province is proposing to broaden COSSARO membership so that it includes those with “community knowledge or aboriginal traditional knowledge”. The proposed changes would also enable the Minister to require COSSARO to reconsider its science-based listing decisions, and removes the current requirement that the Minister consult with an independent expert prior to creating certain regulations or issuing permits.

Aboriginal traditional knowledge is an important addition to COSSARO. Community knowledge is a vague term that could open up COSSARO to those who do not have adequate expertise in species assessment or have a differing agenda.

### **Recommendation**

The Province should include Aboriginal traditional knowledge, and better define “community knowledge” so that is as apparent what value the additional member(s) would be bringing to the Committee. In addition, the Province should continue to rely on scientific expertise as a sound foundation for decision making.

### **“Edge of range” species and protection limitations**

The Province is proposing a change that would require COSSARO to base its assessments not on the status of a species in Ontario, but instead on its status throughout its range. For example, southern Ontario endangered species at the northern limit of their range may receive less or no protection, depending on their status outside Ontario. The Minister would also be able to limit Endangered Species Act protections so that they apply only in specific geographies or under specific circumstances.

Protecting species that inhabit geographies that do not conform to political boundaries will always be a challenge. In light of climate change, it will be increasingly important to protect healthy species populations at their northern limits to help species adapt to changing climatic conditions. As result, we believe the Provincial assessment process of a species’ status must be a science-based and taken from a long-term, risk-averse and apolitical perspective.

The provincial assessment process must also ensure that geographic or circumstantial protections would not arbitrarily allow for the exclusion of important habitats and species from protection. It should also ensure that decisions regarding endangered species prioritize environmental benefits, over other potential social and economic benefits.

### **Recommendations**

The Provincial assessment process for endangered species should continue to be science-based, and taken from a long-term, risk-averse and apolitical perspective. This process should ensure that geographic or circumstantial protections do not arbitrarily

allow for the exclusion of important habitats and species from protection. Any decisions regarding endangered species should prioritize environmental benefits over other potential social and economic benefits.

### **Listing and protection delay**

The proposed process is to list species nine months after COSSARO makes its assessments public. Listing of species at risk would no longer result in automatic protections for threatened and endangered species and their habitats. The Minister would have greater “discretion on protections” including the ability to suspend species and habitat protections for up to three years based on social or economic considerations. Such delays would be exempted from Environmental Bill of Rights (EBR) posting and consultation requirements.

Staff do not support this proposed change. Introducing a nine month delay in protection after a species at risk is listed is counter intuitive. It also increases the risk of vulnerable plants, animals and their habitats being eliminated before protections are in place. Once it has been determined that a species is vulnerable, the consideration and timely implementation of protective measures is a logical next step.

Property-owners are investing in a Province where protecting the natural environment has been identified as a priority. Protecting threatened and endangered species is a responsibility shared by all and must become an ingrained and expected part of the planning and development process. Elimination of EBR consultation requirements, coupled with delays in protections, may result in development that does not adequately fulfil Provincial priorities.

### **Recommendation**

The Province should not proceed with its proposed nine month gap between the COSSARO assessments and listing, nor the decoupling of listing with automatic protection, as these proposed changes would increase the risk of vulnerable plants, animals and their habitats being eliminated before protections are in place. EBR consultation requirements should be maintained.

### **Multi-site authorizations and other approvals**

The Province is proposing to create “landscape agreements” for proponents undertaking activities in multiple locations, and wants to allow activities approved under other laws to be carried out without any additional authorizations under the Endangered Species Act.

We acknowledge and agree that landscape agreements may provide opportunities for additional positive outcomes for endangered species. However, to ensure they are

effective, such agreements must prioritize conservation over economic and social factors, and be implemented to address the full scope of site-specific and species-specific concerns.

With respect to the use of instruments under other Acts to protect species at risk, the Province should carefully consider how best to manage long-term impacts to species and habitats, and any potential risks that may be associated with allowing permanent Endangered Species Act exemptions under other laws (e.g., the forestry industry).

### **Recommendations**

- a) The Province should revise its proposed approach to landscape agreements to prioritize conservation over economic and social factors, and ensure that such agreements address the full scope of site-specific and species-specific concerns; and
- b) In considering the use of instruments under other Acts to protect species at risk, the Province should adopt an approach that best manages long-term impacts to species and habitats, and any potential risks that may be associated with allowing permanent Endangered Special Act exemptions under other laws (i.e., forestry industry).

Thank you for the opportunity to comment on the proposed changes to Ontario's Endangered Species Act. Please contact Kate Hagerman, Manager of Environmental Planning and Sustainability at [khagerman@regionofwaterloo.ca](mailto:khagerman@regionofwaterloo.ca) should you have any questions.

Sincerely,



Rod Regier  
Commissioner, Planning, Development & Legislative Services

cc: Nancy Davy, Director of Resource Management,  
Grand River Conservation Authority