



# OAK RIDGES MORaine LAND TRUST

May 18, 2019

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

Dear Sir/Madam,

**RE: ERO #013-5033 Review of the *Endangered Species Act, 2007***

The Oak Ridges Moraine Land Trust strongly oppose proposed changes to the *Endangered Species Act, 2007* (ESA) put forward in Schedule 5 of Bill 108. The proposed changes to the ESA will negate the original purpose of the act which was to, protect Ontario's most venerable flora and fauna species. The act was put into place to provide legal protections to these species and their habitat, so that their populations can recover. The changes would undermine the very foundation of the ESA: science-based listing using expert and Indigenous Traditional Knowledge, mandatory habitat protection, and legislated timelines for planning and reporting. They would allow for organizations to take advantage of the new ambiguities in the act to destroy that which the act was put into place to protect, imperiled flora and fauna and their habitats.

The richness of habitat in the Oak Ridges Moraine and Greenbelt region is evident in the sight of turtles sunbathing on stream banks, the sound of birdsongs from the trees and the flicker of tiny movements in the grass as small mammals duck in and out. Slick-skinned salamanders and tiny, brightly striped fish rely almost entirely on the land and water of the Greenbelt for their survival. Indeed, the Greenbelt is home to 78 of over 200 provincially listed species at risk in Ontario. Their wavering but continued presence serves as a reminder of the importance in this area of the woodlands, wetlands, meadows, rivers and streams. Under Premier Harris, the Oak Ridges Moraine Conservation Act 2001 was supported by all parties to recognize and protect this important land form and the species at risk that live here.

**We urge the government to remove Schedule 5 in its entirety from Bill 108 and thus not to proceed with the proposed changes to the ESA.**

Below we outline our specific concerns about Schedule 5.

## **1. Assessing and listing species at risk**

The proposed changes undermine the ESA science-based approach to listing new species, delay or prevent species being added to the Species at Risk in Ontario (SARO) list, deny them of the protections that go along with being listed and endanger species in need of listing before protections are granted.

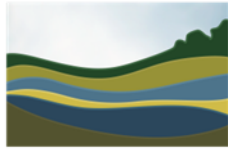
- i. Denying the listing of species assessed by the Committee on the Status of Species at Risk in Ontario (COSSARO). Currently the species must be listed within three months of the minister receiving the assessment from COSSARO. The proposed changes would allow the listing to be



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delayed for up to 12 months (proposed subsection 7(4)), as well as require public notice no later than three months after the minister receives the assessment. This transparency to the public along with the delayed listing would allow for developmental interests to destroy the species and their habitat before the species is granted legal protection. This preventable threat to imperiled species is not acceptable.

- ii. Increasing the minister's ability to second guess a species listing based on his interpretation of the scientific information, would further delay the recovery planning and implementation of protections necessary for at risk species survival. The current ESA allows for the minister to request a review of the COSSARO decision if "credible scientific information" indicates that the listing "is not appropriate" (sec. 8(2)). The proposal changes the language to "may not be appropriate" (proposed subsection 8(2)), the ambiguity in the new language allows the ministers ability to more broadly challenge COSSARO decisions. Under the current ESA when a species listing is challenged the species receives protection until further reassessment says other wise. The proposal would not grant species protection until the reassessment has confirmed that it is in fact worthy of protection (proposed subsections 8 (3) and (4)). Since there is no specified timeline in which the re-assessment must take place this allows for indefinite delays in the listing process. The listing of species should be based solely on good science and not the interpretation of a single person.
- iii. The new changes to the ESA would require COSSARO assessments be based on the species boarder "biological relevant geographic range" rather than only the populations found in Ontario (proposed subsections 5(4) and (5)). This would lead to delisting of species with more stable populations in the US. Further, leading to extirpations of species at risk in Ontario that would no longer have protections in place on them and their habitats. Most of the species that would be affected are species that are at the edge of their range. Removal of these species would be detrimental to the species as a whole for several reasons. Species that live at the edge of their range show the tendency to be more tolerant of extreme conditions, with the onset of climate change this would allow them to be more adaptable to changing conditions. This adaptability may not be observed in the individuals who live in the core of their species' range making them more venerable to the affects of climate change. Habitat degradation in Southern Ontario has destroyed almost all travel corridors between Ontario and the US. This has made most of Ontario's terrestrial species at risk geographically isolated populations and they should be treated as such; there is little or no chance for genetic exchange or interaction between Ontario populations and the more stable populations found in the US. It is our responsibility to protect these genetic pools lest something happens to other populations. These species have cultural, social and economic value to Ontarian's and contribute hundreds of thousands of dollars to the economy each year through numerous outdoor recreational outlets, a fact that is greatly overlooked. These species decline will be felt by Ontarians in more ways than one and will be sorely missed.
- iv. Broadening of COSSARO membership so that it includes other than scientific experts (proposed subsections 3(4) (a) and (b)). Currently COSSARO members must have expertise in (a) a scientific discipline such as conservation biology, population dynamics, taxonomy, systematics or genetics; or (b) aboriginal traditional knowledge. Such qualifications ensure the credibility and transparency of the assessment and listing process. Every management decision is made on solid scientific findings with the inclusion of Indigenous Traditional Knowledge as should be decisions to list species imperiled. Allowing for input of a non-scientific or Indigenous knowledge base allows for political and industrial influence that pays little mind to the well being of these species.



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## 2. Species and Habitat Protection

The proposed changes would allow for, under the discretion of the minister, delaying and limiting of protections for species. This would allow for political and economic interests to weigh in on the listing of a species, a decision that should only be left to unbiased science. The ESA as it stands allows through permits and exemptions, flexibility when it comes to socio-economic issues.

- i. Under the proposed changes the minister would be allowed to suspend the listing of a species for up to three years (proposed subsections 8.1(3)(b) and (5)(b)). For species that are endangered or at risk of becoming extirpated or extinct this is an unacceptable amount of time. There are several conditions that need to be met for this delay to be imposed. Of these conditions the species should have “a broad range within Ontario” and “habitat availability is not a limiting factor”. If a species were to have a broad range within Ontario and ample habitat it is most likely not in need of protection. There is no room for this within the ESA.
- ii. Proposed is a “scoping of species protections where appropriate”. This would allow protections to apply only to specific geographic ranges or in specific circumstances, given is an example “to species that are not affected by disease” (proposed subsections 8(1)(1.2) and (1.3). This could allow critical habitat and populations of species to be overlooked and not gain protections because they are not within the targeted geographic range. The ability to develop a geographic range would undoubtedly play a role in protected geographic ranges. Furthermore, not applying protections to species that are affected by disease is oxymoronic. Species whose populations are affected by disease deserve just as much protection as those who are not as they face an imminent threat. The individuals within that population who survive the disease will then carry immunity to that disease and will then be able to pass that on to their offspring and other populations through genetic exchange. If we were to not provide protections for these populations those who would have become immune could be destroyed and the disease could entirely wipeout populations. Ecologically we can not allow this to happen.

## 3. Species at Risk Recovery Policies

These proposed changes would allow for delay of required policies and reports necessary to take action to assist species in recovery as well as reduce transparency to the public.

- i. Current guidelines require a Government Response Statement (GRS) to be produced within nine months of the publication of a Recovery Strategy (for Endangered or Threatened species) or a Management Plan (for Special Concern species). The proposed changes would allow the GRS to be delayed without any timeline under ministerial digression (proposed subsection 12.1(4)). This would affect the recovery of the species as there would be no government accountability for that species until a GRS is produced.
- ii. The removal of requirements to post notices on the Environmental Bill of Rights Registry when the Minister publishes Recovery Strategies or Management Plans serves no purpose (proposed subsections 11(5) and 12(4)). Posting these notices serves to provide transparency to the public of the government’s fiduciary duties and responsibilities to the recovery of these species. The Environmental Bill of Rights Registry, which “entrenches the rights of the public to receive notice of and provide input into environmentally significant acts, regulations and policies” (Environmental Commissioner of Ontario, 2013, p. 34). To hide this from public eye by posting them on an unknown government site only serves to allow the government to escape from their responsibilities to endangered species.



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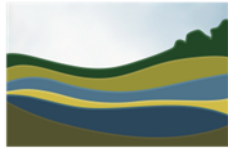
- iii. Under the current ESA it is required that the minister reviews the progress toward protection and recovery of a species no later than five years after the publication of a GRS. The proposed changes would allow the minister to specify a timeline in which the progress will be reviewed. (proposed subsection 12.2(2)(a)). The ambiguity of this language allows for timelines that would be inappropriate for the recovery of species. The current five-year period is sufficient to assess what has been done and what still needs to be done for the protection and recovery of the species.

## **4. Permits, agreements and exemptions to allow harmful activities**

Through various channels in the current ESA allow harmful activities to take place including permits, agreements and exemptions. Permits must be mediated with on-the-ground work that provides a net benefit to the species being affected. However, the lower set standard for exemptions only requires mitigation of harm.

The proposed changes serve only those who think that species at risk habitat has no importance other than what can be built on or extracted from it. The ESA was put into place to aid those species who have been affected by human activities, now it is our duty to protect them as best we can. Yes, authorization processes may result in delays; but this is the Endangered Species Act and should protect these species. Enabling economic development is NOT the purpose of the act, and so-called routine activities can have devastating cumulative impacts – aptly described as “death by a thousand cuts.”

- i. Allowing proponents of harmful activities to pay into a fund in lieu of fulfilling on-the-ground requirements that would otherwise be imposed under the ESA (proposed section 20). A-fee-in-lieu would allow for industry to destroy habitat with greater ease and without providing any benefit to the species that they are affecting. The proposed changes would charge companies what would be within the “range of costs” that a client doing the remediation work would have charged to fulfill the requirements of the current ESA. This charge would most certainly be the lowest possible cost to the company without any real work being done to aid the species affected. Furthermore, there is no mention of a required timeline in which the remediation work must take place. With habitat only being destroyed and little if any being created endangered species will surely be pushed closer to extinction.
- ii. Removal of the requirement for the Minister to consult with an independent expert and to obtain Cabinet approval prior to issuing permits for harmful activities that would provide a significant social or economic benefit to Ontario (section 17(2)d permits). Currently the ESA requires the expert consulted to submit a report on the potential impacts of the proposed harmful activities on the species at risk, including an opinion on “whether the activity will jeopardize the survival or recovery of the species in Ontario.” Removing these requirements would allow for activities to take place with unknown consequences. The purpose of having independent expert consultation is to ensure that the best actions are being taken for the health of that species. The removal of this process would inhibit the ability to provide appropriate remedial responses in the wake of harmful activity.
- iii. Removal of the requirement for the Minister to consult with an independent expert regarding the potential impact of a regulation (e.g., an exemption regulation) on species at risk if it is likely to jeopardize the survival of the species in Ontario. This change would make it easier to pass regulations that could result in serious harm to species at risk and their habitats. It would undermine the rigour and credibility of the Minister’s decision. Those authorized by a permit to proceed with harmful activities would no longer be required to take measures to avoid adverse



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impacts to individual members of a species (subsections 17(2)(c)(iii) and 17(2)(d)(v)). This proposed action would no longer provide protections to individuals in the area where harmful activities are taking place. This could be disastrous to species with a tendency to spread out and live individually in times of non-breeding, an example of this is Ontario's turtles. Biologically turtles are slow to mature and have high nest predation due to raccoon's success with living in close proximity to humans. This makes EVERY individual in that population essential to their species' survival.

- iv. Creation of "landscape agreements" for proponents undertaking multiple harmful activities throughout a geographic area (proposed section 16.1). This would allow development to sweep across the landscape with little regard for all the species present. In this proposal there is little or no room for site-specific or species-specific consideration. Although it would be required for the proponent to take action to mitigate harm done, this only applies to a single species. If multiple species are found within the geographic area all but one will suffer.
- v. Removal of the current requirement to provide an overall benefit to negatively impacted species when harmful activities approved under other pieces of legislation are authorized to proceed under section 18 of the ESA. Section 18 of the ESA already provides a means to harmonize its requirements with other legislative or regulatory frameworks. But it is premised on providing an overall benefit to species negatively impacted. This high standard is intended to promote species recovery, whereas the proposed change aims only to ensure that steps are taken to minimize adverse effects. Minimizing adverse effects indicates that there is going to be a net loss for the species. Section 18 should remain as is so that the ESA can continue to ensure the recovery of species rather than be used for damage control.

## Summary remarks

On May 6th, only four days after the government of Ontario tabled Bill 108 and Schedule 5, the United Nations released a report documenting extinction rates unprecedented in human history. According to the Chair of the UN's Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), "The health of ecosystems on which we and all other species depend is deteriorating more rapidly than ever. We are eroding the very foundations of our economies, livelihoods, food security, health and quality of life worldwide" (IPBES media release, May 6, 2019 Paris). Species and ecosystems in Ontario are very much part of this global trend, and thus the report provides an appropriate frame for understanding the broad implications of the proposed changes to the ESA. These changes would weaken, delay, limit and remove protections for Ontario's most vulnerable plants and animals and in doing so contribute to ongoing biodiversity decline across the province. They amount to nothing less than a proposal to sacrifice the recovery of species at risk to those with vested short-term economic interests in unbridled development. These species are neither Liberal nor Conservative, they pay no mind to the bipartisan debates of this country. Their fate should not be at risk while we debate amongst ourselves.

**We urge the government to remove Schedule 5 in its entirety from Bill 108.**

Sincerely,

Susan Walmer, CPA, CMA  
Executive Director,  
Oak Ridges Moraine Land Trust