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BY E-MAIL ONLY (ESAreg@ontario.ca)

Public Input Coordinator
Species Conservation Policy Branch
300 Water Street
Floor 5N
Peterborough, ON K9J 3C7

Re: 10th Year Review of Ontario's Endangered Species Act: Proposed Changes (ERO #013-5033) and Bill 108, More Homes, More Choice Act, Schedule 5

Thank you for the opportunity to comment on the Ministry of Environment, Conservation and Parks' proposed changes to the *Endangered Species Act* (the ESA). The Toronto and Region Conservation Authority (TRCA) provided comments in our March 4, 2019 letter to the Ministry on the "10th Year Review of Ontario's Endangered Species Act: Discussion Paper". The Paper contemplated issues leading to the legislative amendments now proposed.

We understand that the ESA review is to improve protections and consider modern and innovative approaches that achieve positive outcomes for species at risk, to streamline approvals, and to provide clarity that supports economic development. After considering comments on the Discussion Paper, the government is proposing changes to the ESA. On May 3, 2019, the current ERO posting was updated with supporting material in the form of Bill 108, the "More Homes, More Choice Act" introduced as part of the Province's Housing Supply Action Plan of the same name.

Bill 108 is an Act to amend many other Acts including the ESA. The Province's stated purpose of the amendments to the ESA is to protect species at risk while clarifying rules and paths to compliance to not unnecessarily burden development.

TRCA has an ongoing interest in protecting all wildlife species and their habitat given our roles as:

- A regulator under Section 28 of the *Conservation Authorities Act*;
- A public commenting body under the *Planning Act* and the *Environmental Assessment Act*;
- A service provider to our municipal partners;
- A resource management agency operating on a local watershed basis; and
- One of the largest landowners in the Greater Toronto Area.

In these roles, TRCA supports our provincial and municipal partners in implementing the natural heritage policies of the Provincial Policy Statement and protects and restores wildlife habitat through our mandate under the *Conservation Authorities Act*. Where endangered species are affected by development, provincial staff undertake a concurrent review of planning proposals in accordance with the ESA.

As outlined in this submission and in our previous comments on the Discussion Paper, through research, science and expertise, TRCA has developed tools and strategies that can be used to inform and support the implementation of the ESA. These include, among others, TRCA's Terrestrial Natural

Heritage System Strategy, Integrated Restoration Prioritization framework and the Toronto Waterfront Aquatic Habitat Restoration Strategy. Comprehensive, creative and collaborative approaches early in the planning process, including the use of such tools, facilitates better decision making, positive outcomes for species at risk, and greater certainty for all stakeholders.

With TRCA's roles and experience in mind, we offer the following responses to the proposed changes to the ESA.

General Comments

We understand that through the public consultation on the Discussion Paper, the government heard support for strong protections for species at risk and their habitat, but that the current approvals process is long, duplicative and unpredictable. It is not clear from the materials released if these concerns will be addressed through the proposed changes to the ESA. TRCA previously commented that providing adequate frontline staff and empowering them to provide feedback throughout the planning process would speed up all processes associated with ESA implementation.

In TRCA's experience, efficient and effective screening, review and approvals under the ESA are best achieved where there is an appropriately qualified, single point of contact from the initial stages of a project through to detailed design. For example, our previous comments stated that for large scale planning exercises, such as Municipal Comprehensive Reviews, regional infrastructure master plans, provincial highway and transit corridor studies, addressing SAR as early as possible would result in better outcomes for those species and those delivering the projects. This upfront approach would also apply to watershed plans, subwatershed plans, Master Environmental Servicing Plans and Environmental Assessments associated with these large-scale exercises. In this way, reviewers on SAR would provide clear direction to proponents tied to early planning milestones. The intent here would be to "set-up" the project to satisfy ESA requirements. Currently, feedback is deferred to detailed design or the end of a planning process causing uncertainty and delay.

Conservation authorities (CAs) with capacity could undertake this role as staff are likely already involved in the project through our roles in development planning and environmental assessment review. Accordingly, with oversight by MECP, CAs could play a more prominent role in the application of the ESA through delegation by the Province. Particularly in the Greater Golden Horseshoe where qualified staff, data and tools exist. CAs could play a role in habitat delineation, permit negotiation and issuance, timing window application and Overall Benefit Permit planning and implementation.

TRCA's roles in the review of development applications from approval in principle to detailed design, the management of natural resources, and development of science, uniquely positions it to aid in determining the best approach to protecting a species and its habitat. Conservation authorities, municipalities and other forums, such as the Regional Watershed Alliance (a subcommittee of the TRCA Board of Directors comprised of government and citizen representatives), could also be consulted when determining approaches for species and habitat protection. The development of codes of practice standards or guidelines would benefit from consultation with these entities as well. Such consultation would maximize streamlining of approvals and ensure harmony with parallel planning and permitting processes.

Detailed Comments

Our detailed comments below are organized by the government’s summary of the amendments to the ESA contained in Schedule 5 of Bill 108 (page ii).

Summary of Significant Amendments	TRCA Comments
<p>Subsection 7(4) of the Act currently provides that a regulation must be made under section 7 listing species on the Species at Risk in Ontario List within three months of the Minister receiving a report from COSSARO classifying the species. The Schedule amends the subsection to extend the time frame for making the regulation to 12 months after receiving the COSSARO report.</p>	<ul style="list-style-type: none"> • When science informs the listing of species, it is the responsibility of the government charged with the protection of these species to protect them. The timeline of 3 months to enact regulation(s) is reasonable since the species has already been scientifically assessed and there is specific information available that allows for regulation(s) to be developed without delay.
<p>Subsections 8 (3) and (4) of the Act are amended to provide that, once the Minister requests that COSSARO reconsider the classification of a species set out in a report to the Minister, the requirement to make a regulation under section 7 within 12 months of receiving that report no longer applies. The 12-month period will only begin to run once COSSARO submits a second report to the Minister.</p>	<ul style="list-style-type: none"> • TRCA is concerned that this change may result in significant delays to enact regulations to protect a newly classified species. We strongly recommend that all decisions are informed by science, which has already provided a rigorous assessment of the species.
<p>Under new section 8.1, the Minister may, by regulation, make an order when a species is listed on the Species at Risk in Ontario List as an endangered or threatened species for the first time. The order would temporarily suspend all or some of the prohibitions in subsections 9 (1) and 10 (1) of the Act with respect to the species for a period of up to three years.</p>	<ul style="list-style-type: none"> • We support removal of this new clause. A timeline as long as three years will seriously impede the Province’s ability to recover these species. Species are listed because they are at risk. The opportunity to respond as early as possible, to address threats and foster species recovery, will be lost. Delay of prohibitions for up to three years of any newly listed species will likely only add to population decline and the subsequent path to extirpation of species in Ontario. • Species life history and generational time should be a major consideration in delaying or suspending prohibitions, so the species does not suffer adverse impacts while not being protected.

	<ul style="list-style-type: none"> • We question the need for temporary suspension of the prohibitions for up to three years. A much shorter timeframe should be adequate for a transitional period.
<p>Subsection 9 (1) of the Act currently sets out prohibitions that apply to species once they are listed on the Species at Risk in Ontario List as endangered or threatened species. The Schedule enacts subsections 9 (1.2) to (1.4) which give the Minister the power to make regulations limiting the application of the prohibitions with respect to a species. The limitations may limit the prohibitions in various ways, including by indicating that some of the prohibitions do not apply, by limiting the geographic areas in which they apply or by providing that the prohibitions only apply to the species at a certain stage of their development.</p>	<ul style="list-style-type: none"> • Regulations under the ESA should be implemented based on scientific evidence. To ignore scientific evidence would create great risk for species that require protection. • Limiting prohibitions in this way would create a double-standard depending on the life stage that the species is at, or where it geographically resides. This potential geographic limitation may also result in confusion among proponents who are working in different areas of the province and may unfairly disadvantage locations where prohibitions still apply.
<p>New section 16.1 allows the Minister to enter into landscape agreements with persons. A landscape agreement authorizes a person to engage in activities that would otherwise be prohibited under section 9 or 10 with respect to one or more species that are listed on the Species at Risk in Ontario List as endangered or threatened species. The person so authorized is required under the agreement to execute specified beneficial actions that will assist in the protection or recovery of one or more species. The agreement applies only to a geographic area specified in the agreement. The species impacted by the authorized activities are not necessarily the same as the species that benefit from the beneficial actions. The agreement may only be entered into if specified criteria is met.</p>	<ul style="list-style-type: none"> • TRCA recommends that a landscape agreement should, to the greatest extent possible, demonstrate that the species impacted by the authorized activities will benefit from the beneficial actions. However, other species should also benefit from the beneficial actions. • A landscape approach is an excellent tool to achieve broad ecosystem-based protection and broad-scale management that will benefit multiple species, both at-risk and not at-risk. However, TRCA recommends that the agreement expressly benefit the species being impacted by the authorized activities or the goals of the Act will be defeated. • An effective tool to help operationalize this section would be developing restoration opportunities plans at a scale relevant to the impacted species. Opportunities for both terrestrial and aquatic systems would be included, capitalizing on restoration efforts that benefit the whole of the natural heritage system. Partner agencies, such as CAs, have tools

	<p>and experience in creating such plans that could realize multiple benefits, including those related to species at risk.</p> <ul style="list-style-type: none"> • Specific criteria to be met under this offsetting approach should be developed and approved by COSSARO before landscape agreements are developed and approved.
<p>New sections 20.1 to 20.18 provide for the establishment of the Species at Risk Conservation Fund and of an agency to manage and administer the Fund. The purpose of the Fund is to provide funding for activities that are reasonably likely to protect or recover species at risk. The primary source of money for the Fund are species conservation charges that certain persons may be required to pay into the Fund under the Act. Those persons are required to pay the charge as a condition of a permit or other authorization issued or entered into under the Act that authorizes the person to engage in activities. Were it not for the permit or authorization, those activities would be prohibited under section 9 or 10 of the Act with respect to species that are designated by the regulations.</p>	<ul style="list-style-type: none"> • Financial compensation that goes directly to the protection or recovery of a species is a good principle if it is identified as a last resort. TRCA recognizes past difficulty in sourcing overall benefit projects and the opportunities lost on some projects due to that difficulty. • There needs to be a consistent, accurate and full costing approach to determine fees for the replacement of lost habitat and limits around the negotiation of that cost. TRCA would be happy to assist in determination of appropriate rates related to the implementation of habitat restoration or enhancement projects. As previously commented, partner agencies such as CAs could be engaged to provide restoration opportunities and services to aid in the permitting process and the planning and implementation of projects under the Fund. CAs have demonstrated expertise and capacity in project delivery related to the ESA. • A consistent standard for restoration needs should be applied where the best science-based practices are being employed to maximize natural capital gains.
<p>New section 27.1 gives the Minister the power to order a person not to engage in an activity or to stop engaging in an activity that may have a significant adverse effect on a species listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species. The order may also require the</p>	<ul style="list-style-type: none"> • This a positive addition to the Act for enhancing compliance and TRCA is supportive of this new clause.

person to take steps to address the adverse effect of the activity.	
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TRCA recommends that:

- 1. Conservation authorities with capacity be delegated by the Province to assist in implementation of the ESA to facilitate timely reviews and certainty early in the planning process.**
- 2. With respect to the amendments in subsections 7 (4) and 8 (3) and 8 (4), that the current 3-month time limit be maintained for listing species determined to require protection by COSSARO. TRCA does not support the amendment to extend this time frame to 12 months (initially and where second reports are requested by the Minister).**
- 3. The new Section 8.1 to allow a Minister's Order by regulation, which would temporarily suspend all or some of the prohibitions in subsections 9 (1) and 10 (1) of the Act with respect to the species for a period of up to three years be removed, or that a much shorter timeframe to facilitate transition be imposed that considers species life history and generational time.**
- 4. The new subsections 9 (1.2) to (1.4), which gives the Minister the power to make regulations limiting the application of the prohibitions with respect to a species once listed by COSSARO, be removed.**
- 5. The new section 16.1 enabling the Minister to enter into landscape agreements with proponents impose requirements for landscape agreements to:**
 - demonstrate that the species impacted by the authorized activities will benefit from the beneficial actions, in addition to it benefitting other species;**
 - be reviewed to the satisfaction of COSSARO prior to Minister's approval;**
 - be developed in consultation with the applicable municipality and conservation authority given their local knowledge and expertise for ecological restoration opportunities.**
- 6. The new sections 20.1 and 20.18 for establishing a Species at Risk Conservation Fund contain requirements to:**
 - demonstrate that financial compensation would go directly to the protection or recovery of a species and their habitat;**
 - demonstrate that the cash-in-lieu option is a last resort after all efforts to protect the species have been exhausted;**
 - adhere to a consistent, accurate and full-costing approach to determine fees for the replacement of lost habitat and limit the negotiation of that cost;**
 - consult with the applicable conservation authority to assist in determination of appropriate rates related to the implementation of habitat restoration or enhancement projects.**

7. In the interest of avoiding delays and confusion post approval, education be provided to municipalities and other relevant agencies to explain the changes to the Act and ensure harmonization between various parallel planning processes.

Thank you once again for the opportunity to provide comments on the amendments to the ESA. TRCA would be pleased to discuss these and other opportunities for protecting and restoring species populations and their habitats while enhancing certainty and efficiencies in the development and infrastructure review processes.

Should you have any questions, require clarification, or wish to meet to discuss any of the above remarks, please contact the undersigned.

Sincerely,



John MacKenzie, M.Sc.(PI), MCIP, RPP
Chief Executive Officer

BY E-MAIL

cc:

TRCA: Sameer Dhalla, Director, Development and Engineering Services
Laurie Nelson, Director, Policy Planning
Brad Stephens, Senior Manager, Planning Ecology

